

# UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Dairy Division

## **NEW ENGLAND MARKETING AREA**

Federal Milk Order No. 1

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November 7, 1996

To: Richard M. McKee, Director, DA Division, AMS

From: Erik F. Rasmussen, Market Administrator, Boston, Massachusetts

Subject: Preliminary Report of the Identical Provisions Committee

The Preliminary Report of the Identical Provisions Committee is comprised of four sections.

### Section 1 — Preliminary Recommendations for Order Provisions

The table which comprises the first section of this report is divided into three columns. The first contains those provisions of the Southeast Order which were considered by the Identical Provisions Committee. Southeast Order language was selected as a starting point since it is one of the more recently enacted orders. The first column also reflects in italics language added by the Committee. Deleted language is enclosed in brackets.

The second column contains, for those provisions considered by the Committee, recommended language for the uniform provisions.

The third column contains Committee notations.

### Section 2 — Explanations for Recommended Provisions

This is an initial draft explaining the Committee's preliminary recommended provisions. The Committee believed that it would be helpful to the public in providing additional comment. It has not been thoroughly discussed or approved by the Committee and is a work in progress.

### Section 3 — Public Comments and Committee Disposition

This section contains a brief summary of the public comments categorized by subject with the Committee's analysis and response.

### Section 4 — Impact on Small Business

Based on public input through October 23, 1996, and the available data, the Identical Provisions Committee believes the ideas/concepts recommended in this report have merit at this time. The Committee and Department are open to continuous public input and may make revisions to this report as additional information becomes available.

## SECTION 1 — PRELIMINARY RECOMMENDATIONS FOR ORDER PROVISIONS

November 6, 1996

SOUTHEAST ORDER PROVISIONS	RECOMMENDED PROVISIONS	COMMITTEE NOTATIONS
<div style="border: 3px double black; padding: 10px; margin: 10px;"> <p style="text-align: center;"><b>UNITED STATES DEPARTMENT OF AGRICULTURE</b> <b>Agricultural Marketing Service</b></p> <p style="text-align: center;"><b>ORDER REGULATING THE HANDLING OF MILK IN THE SOUTHEAST MARKETING AREA</b></p> </div> <p style="text-align: center;"><b><u>PART 1007 -- MILK IN THE SOUTHEAST MARKETING AREA</u></b> <b>Subpart--Order Regulating Handling</b></p> <p style="text-align: center;"><b>GENERAL PROVISIONS</b></p>	<p style="text-align: center;"><b>UNITED STATES DEPARTMENT OF AGRICULTURE</b> <b>Agricultural Marketing Service</b></p> <p style="text-align: center;"><b>ORDER REGULATING THE HANDLING OF MILK IN THE _____ MARKETING AREA</b></p> <p style="text-align: center;"><b><u>PART 100X -- MILK IN THE MARKETING AREA</u></b> <b>Subpart--Order Regulating Handling</b></p> <p style="text-align: center;"><b>GENERAL PROVISIONS</b></p>	
<p><b>Sec.</b> 100X.1 General provisions.</p> <p style="text-align: center;"><b>DEFINITIONS</b></p> <p>100X.2 [Southeast] marketing area. 100X.3 Route disposition. 100X.4 Plant. 100X.5 Distributing plant. 100X.6 Supply plant. 100X.7 Pool plant. 100X.8 Nonpool plant. 100X.9 Handler. 100X.10 Producer-handler. 100X.11 [Reserved]</p>	<p><b>Sec.</b> 100X.1 General provisions.</p> <p style="text-align: center;"><b>DEFINITIONS</b></p> <p>100X.2 Marketing area. 100X.3 Route disposition. 100X.4 Plant. 100X.5 Distributing plant. 100X.6 Supply plant. 100X.7 Pool plant. 100X.8 Nonpool plant. 100X.9 Handler. 100X.10 Producer-handler. 100X.11 [Reserved]</p>	

100X.12 Producer. 100X.13 Producer milk. 100X.14 Other source milk. 100X.15 Fluid milk product. 100X.16 Fluid cream product. 100X.17 Filled milk. 100X.18 Cooperative association. 100X.19 Commercial food processing establishment.  <p style="text-align: center;"><b>HANDLER REPORTS</b></p> 100X.30 Reports of receipts and utilization. 100X.31 Payroll reports. 100X.32 Other reports.  <p style="text-align: center;"><b>CLASSIFICATION OF MILK</b></p> 100X.40 Classes of utilization. 100X.41 Shrinkage. 100X.42 Classification of transfers and diversions. 100X.43 General classification rules. 100X.44 Classification of producer milk. 100X.45 Market administrator's reports and announcements concerning classification.  <p style="text-align: center;"><b>CLASS PRICES</b></p> 100X.50 Class prices. 100X.51 Basic formula price. 100X.52 Plant location adjustments for handlers. 100X.53 Announcement of class prices. 100X.54 Equivalent price.	100X.12 Producer. 100X.13 Producer milk. 100X.14 Other source milk. 100X.15 Fluid milk product. 100X.16 Fluid cream product 100X.17 Filled milk. 100X.18 Cooperative association. 100X.19 Commercial food processing establishment.  <p style="text-align: center;"><b>HANDLER REPORTS</b></p> 100X.30 Reports of receipts and utilization. 100X.31 Payroll reports. 100X.32 Other reports.  <p style="text-align: center;"><b>CLASSIFICATION OF MILK</b></p> 100X.40 Classes of utilization. 100X.41 Shrinkage. 100X.42 Classification of transfers and diversions. 100X.43 General classification rules. 100X.44 Classification of producer milk. 100X.45 Market administrator's reports and announcements concerning classification.  <p style="text-align: center;"><b>CLASS PRICES</b></p> 100X.50 Class prices. 100X.51 Basic formula price. 100X.52 Plant location adjustments for handlers. 100X.53 Announcement of class prices. 100X.54 Equivalent price.	
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<p style="text-align: center;"><b>UNIFORM PRICES</b></p> <p>100X.60 Handler's value of milk for computing the uniform price.</p> <p>100X.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).</p> <p>100X.62 Announcement of uniform prices and butterfat differential.</p> <p style="text-align: center;"><b>PAYMENTS FOR MILK</b></p> <p>100X.70 Producer-settlement fund.</p> <p>100X.71 Payments to the producer-settlement fund.</p> <p>100X.72 Payments from the producer-settlement fund.</p> <p>100X.73 Payments to producers and to cooperative associations.</p> <p>100X.74 Butterfat differential.</p> <p>100X.75 Plant location adjustments for producers and on nonpool milk.</p> <p>100X.76 Payments by a handler operating a partially regulated distributing plant.</p> <p>100X.77 Adjustment of accounts.</p> <p>100X.78 Charges on overdue accounts.</p> <p style="text-align: center;"><b>ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION</b></p> <p>100X.85 Assessment for order administration.</p> <p>100X.86 Deduction for marketing services.</p>	<p style="text-align: center;"><b>UNIFORM PRICES</b></p> <p>100X.60 Handler's value of milk for computing the uniform price.</p> <p>100X.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).</p> <p>100X.62 Announcement of uniform prices and butterfat differential.</p> <p style="text-align: center;"><b>PAYMENTS FOR MILK</b></p> <p>100X.70 Producer-settlement fund.</p> <p>100X.71 Payments to the producer-settlement fund.</p> <p>100X.72 Payments from the producer-settlement fund.</p> <p>100X.73 Payments to producers and to cooperative associations.</p> <p>100X.74 Butterfat differential.</p> <p>100X.75 Plant location adjustments for producers and on nonpool milk.</p> <p>100X.76 Payments by a handler operating a partially regulated distributing plant.</p> <p>100X.77 Adjustment of accounts.</p> <p>100X.78 Charges on overdue accounts.</p> <p style="text-align: center;"><b>ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION</b></p> <p>100X.85 Assessment for order administration.</p> <p>100X.86 Deduction for marketing services.</p>	
<p><b>Authority: 7 U.S.C. 601 - 674.</b></p> <p style="text-align: center;"><b>Subpart--Order Regulating Handling GENERAL PROVISIONS</b></p>	<p><b>Authority: 7 U.S.C. 601 - 674.</b></p> <p style="text-align: center;"><b>Subpart--Order Regulating Handling GENERAL PROVISIONS</b></p>	
<p><b>§100X.1 General provisions.</b></p> <p>The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.</p>	<p><b>§100X.1 General provisions.</b></p> <p>The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.</p>	

DEFINITIONS	DEFINITIONS	
<p><b>§100X.2 [Southeast] Marketing area.</b></p> <p>The "[Southeast] marketing area" [hereinafter called the "marketing area,"] means all territory within the bounds of the following <u>states and political subdivisions</u>: [Alabama, Florida, Georgia, Mississippi, Tennessee, and Arkansas counties and Louisiana parishes], including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed [counties or parishes] <u>states or political subdivisions</u>:</p>	<p><b>§100X.2 Marketing area.</b></p> <p>The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:</p>	<p>Generic language chosen to apply to all regions of the country.</p> <p>Generic language chosen to apply to all regions of the country.</p> <p>Territories to be recommended by Dairy Division and Regional Committees.</p>
Zone 1 . . . .		
Zone 2 . . . .		
Zone 3 . . . .		
Zone 4 . . . .		
Zone 5 . . . .		
Zone 6 . . . .		
Zone 7 . . . .		
Zone 8 . . . .		
Zone 9 . . . .		
Zone 10 . . . .		
Zone 11 . . . .		
Zone 12 . . . .		

<p><b>§100X.3 Route disposition.</b></p> <p>Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product <u>in consumer-type packages or dispenser units</u> classified as Class I milk. [Packed fluid milk products that are transferred to a distributing plant from a plant with route disposition in the marketing area and which are classified as Class I under §100X.40(a) shall be considered as route disposition from the [transferor] <u>transferring</u> plant, rather than the [transferee] <u>receiving</u> plant, for the single purpose of qualifying it as a pool plant [under §100X.7(a).]</p>	<p><b>§100X.3 Route disposition.</b></p> <p>Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.</p>	<p>The words “in consumer-type packages . . .” added to remove ambiguity. (See corresponding removal of identical language from Section 100X.8(c).)</p> <p>Removal of phrase in order to clarify and simplify the definition of route disposition. The identification of route disposition with a plant in the event of a transfer is a pooling issue, so the phrase was moved to .7(a)(3) under pool distributing plant. Some words were replaced to simplify language.</p>
<p><b>§100X.4 Plant.</b></p> <p>Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, [including filled milk,] are received, processed, or packaged. <u>A</u> separate [facilities] <u>building</u> without stationary storage tanks that [are] <u>is</u> used only as a reload point for transferring bulk milk from one tank truck to another or <u>a</u> separate [facilities] <u>building</u> used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.</p>	<p><b>§100X.4 Plant.</b></p> <p>Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.</p>	<p>All references to filled milk are removed from the order.</p> <p>The word “facilities” was replaced with the words “buildings” to remove any doubts that singular operations or departments, such as the cooler, are indeed considered to be part of the plant. Buildings owned by the entity that are separate and removed at some distance and function only as transfer or distribution sites are not considered to be part of the plant. Regional Committee to recommend exceptions, such as allowing stationary storage tanks in defining reload points.</p>
<p><b>§100X.5 Distributing plant.</b></p> <p>Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition [in the marketing area during the month].</p>	<p><b>§100X.5 Distributing plant.</b></p> <p>Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition.</p>	<p>The phrase that was removed is a pooling issue which is addressed in Section 7(a) under pool distributing plant.</p>

<p><b>§100X.6 Supply plant.</b></p> <p>Supply plant means a plant <i>other than a distributing plant</i> that is approved by a duly constituted regulatory agency for the handling of Grade A milk and <i>at which fluid milk products are received or</i> from which fluid milk products are transferred <i>or diverted</i> [during the month to a pool distributing plant].</p>	<p><b>§100X.6 Supply plant.</b></p> <p>Supply plant means a plant other than a distributing plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are received or from which fluid milk products are transferred or diverted.</p>	<p>The phrase “other than a distributing plant” was added to ensure that a handler would be categorized and regulated as a distributing plant if engaged in activities that satisfy the requirements for both a distributing and supply plant.</p> <p>The phrase “at which fluid milk products are received” was added to clarify that milk need not be transferred or diverted in order for a plant to qualify.</p> <p>The phrase “or diverted” was added to clarify that milk need not be physically received at the supply plant every month in order to qualify.</p> <p>The words “during the month” are not necessary.</p> <p>The destination of the milk is a pooling issue not required for a general definition, and so the phrase “to a pool distributing plant” was eliminated.</p>
<p><b>§100X.7 Pool plant.</b></p> <p>Pool plant means a plant specified in paragraphs (a), (b), (c), (e) or (f) of this section, [or] a [unit] <i>system</i> of plants as specified in paragraph (d) of this section, <i>or a unit of plants as specified in paragraph (g) of this section</i> but excluding a plant specified in paragraph (i) of this section. The pooling standards described in paragraphs [(a) through] (b) and (c) of this section are subject to modification pursuant to paragraph (h) of this section:</p> <p>(a) A distributing plant from which during the month:</p>	<p><b>§100X.7 Pool plant.</b></p> <p>Pool plant means a plant specified in paragraphs (a), (b), (c), (e) or (f) of this section, a system of plants as specified in paragraph (d) of this section, or a unit of plants as specified in paragraph (g) of this section but excluding a plant specified in paragraph (i) of this section. The pooling standards described in paragraphs (b) and (c) of this section are subject to modification pursuant to paragraph (h) of this section:</p> <p>(a) A distributing plant from which during the month:</p>	<p>Conforming changes to accommodate additional paragraphs in this section.</p>

<p>(1) Total route disposition, [except filled milk,] is equal to [50] <u>25</u> percent or more of the total quantity of [Grade A] <u>bulk</u> fluid milk products, [except filled milk,] physically received at [such] <u>the</u> plant or diverted therefrom <u>by the plant operator</u> pursuant to §100X.13; and</p>	<p>(1) Total route disposition is equal to 25 percent or more of the total quantity of bulk fluid milk products physically received at the plant or diverted therefrom by the plant operator pursuant to §100X.13; and</p>	<p>All references to filled milk are removed from the order.</p> <p>The specification of Grade A milk is dealt with in the general definition for distributing plant (100X.5).</p> <p>The divisor in determining route disposition is bulk milk receipts, and this is clarified.</p> <p>Lower percentage was chosen in order to ensure continued pool status for those producers shipping to plants traditionally pooled in any market.</p> <p>Addition of the words “by the plant operator” limits control over diversions to the plant operator for purposes of qualifying under this paragraph.</p> <p>Regional Committees may want to address adjusting the 25 percent in (a)(1) to meet local needs.</p> <p>This Committee recommends 25 percent for the purpose of uniformity. If one identical percentage is to be set for all orders, the percentage should be set at the lowest currently in place so as to include all plants that are currently pool distributing plants.</p>
<p>(2) Route disposition, [except filled milk,] in the marketing area is at least [the lessor of a daily average of 1,500 pounds or 10] <u>15</u> percent of [the total quantity of <u>bulk</u> fluid milk products, [except filled milk,] physically received or diverted therefrom] <u>total route disposition</u>. [ <u>by the plant operator</u> pursuant to §100X.13.]</p>	<p>(2) Route disposition in the marketing area is at least 15 percent of total route disposition.</p>	<p>Removal of “except filled milk” (See (a)(1) above)</p> <p>Daily average minimum is removed. (See section 8(e) for exempt distributing plant definition).</p> <p>Minimum percentage is increased to prevent an adverse impact on many plants which are currently partially regulated.</p> <p>Total route disposition as a divisor is currently written in Orders 5 and 33, and can not be manipulated to avoid pool status as easily as total receipts.</p> <p>The words “by the plant operator” are no longer necessary as a result of redefining divisor.</p>

<p><i>(3) For purposes of this section, Packaged fluid milk products that are transferred to a distributing plant [from a plant with route disposition in the marketing area] and which are classified as Class I [under §100X.40(a)] shall be considered as route disposition from the [transferor] <u>transferring</u> plant, rather than the [transferee] <u>receiving</u> plant, for the single purpose of qualifying <u>the transferring plant</u> as a pool <u>distributing</u> plant [under §100X.7(a)].</i></p>	<p>(3) For purposes of this section, packaged fluid milk products that are transferred to a distributing plant and which are classified as Class I shall be considered as route disposition from the transferring plant, rather than the receiving plant, for the single purpose of qualifying the transferring plant as a pool distributing plant</p>	<p>The phrase “For the purposes of this section” was added to clarify application.</p> <p>The phrase “...from a plant with route disposition is the marketing area...” was removed because the limitation is too encompassing. The clarification of the plant to which the milk disposition is attributed for pool plant qualification is meant to address the concern of properly pooling a plant with sales outside of the marketing area that are made through another plant as well as sales made in the marketing area through another plant.</p> <p>Removal of the reference [under 100X.7(a)] and the replacement of the words “transferring” and “receiving” and the addition of the word “distributing” were done to simplify the language.</p>
<p><i>(4) Notwithstanding sections (1) and (2) of this paragraph, any plant located in the marketing area at which the principal activity of such plant is the processing and distributing of aseptically packaged fluid milk products.</i></p>	<p>(4) Notwithstanding sections (1) and (2) of this paragraph, any plant located in the marketing area at which the principal activity of such plant is the processing and distributing of aseptically packaged fluid milk products.</p>	<p>Extended shelf life plant lock-in to order where located.</p>
<p>(b) A supply plant [from which during each of the months of [July] _____through [November] _____ [60] ____ percent [(40) ____ percent during each of the months of [December] _____ through [June] _____) of the total quantity of [Grade A] milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to §100X.13 but excluding milk diverted to such plant) and handlers described in §100X.9(c) is transferred to pool distributing plants.]</p>	<p>(b) A supply plant .....</p>	<p>The pool supply plant definition and performance standards for individual markets to be recommended by Regional Committees in order to accommodate regional conditions.</p> <p>The reference to Grade A milk is not necessary here. It was specified in the general definition for supply plants (100X.6).</p>

<p>(c) A <u>reserve supply</u> plant located within the [Southeast] marketing area [that is operated by a cooperative association] if pool plant status under this paragraph is requested for [such] <u>the</u> plant [by the cooperative association] and during the month producer milk <u>or 9(c) milk in the case of a plant operated by a cooperative association</u> [of members of such cooperative association] is delivered <u>by the operator of the plant</u> directly from farms to pool distributing plants or is transferred to such the plants as a fluid milk product from the [cooperative's] plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than [60] ___ percent of the total producer milk of [such cooperative association] <u>the handler</u> in each of the months of [July]_____ through [November]_____, and [40] ___ percent of such milk in each of the months of [December]_____ through [June] _____. The plant's pool plant status shall be subject to the following conditions:</p>	<p>(c) A reserve supply plant located within the marketing area if pool plant status under this paragraph is requested for the plant and during the month producer milk or 9(c) milk in the case of a plant operated by a cooperative association is delivered by the operator of the plant directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than ___ percent of the total producer milk of the handler in each of the months of _____ through_____, and ___ percent of such milk in each of the months of_____ through _____. The plant's pool plant status shall be subject to the following conditions:</p>	<p>The words “reserve supply plant” were added to categorize plants located in the marketing area described in this paragraph.</p> <p>The references to plants “operated by a cooperative association” were removed to accommodate plants currently designated as pool plants which are not operated by cooperatives. The addition of 9(c) accommodates plants operated by cooperatives.</p> <p>The words “by the operator of the plant” were added (see section (a)(1) above).</p> <p>Percentages and months may vary by region based on regional conditions and will be recommended by Regional Committees.</p>
<p>(1) The plant does not qualify as a pool plant under paragraph[s] (a) [or (b)] of this section or under the provisions of another Federal order applicable to a distributing plant, [or] a supply plant, [and] <u>or a reserve supply plant</u>;</p>	<p>(1) The plant does not qualify as a pool plant under paragraph (a) of this section or under the provisions of another Federal order applicable to a distributing plant, a supply plant, or a reserve supply plant;</p>	<p>Depending on the performance standards decided upon, it is conceivable that at some times, a reserve processing plant could also satisfy the supply plant requirements. This is more potentially a problem with a system of reserve supply plants where one plant's operations would likely exceed the reserve supply plant standards in order to qualify the other plants in the system. Removing the limitation (b) will remove ambiguity in qualifying for reserve supply plant status or as a system of reserve supply plants.</p> <p>The phrase “or a reserve supply plant” was added to clearly disqualify other Federal order reserve supply plants.</p>
<p>(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk <u>and</u></p>	<p>(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk; and</p>	

<p><u>(3) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than [July 15] June 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for [August] July and continue through the following [July] June unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order.</u></p>	<p>(3) The operator of the plant has filed a request with the market administrator for pool reserve supply status no later than June 15 of each year. Once qualified as a pool plant pursuant to this paragraph, such status shall be effective for July and continue through the following June unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another Federal order.</p>	<p>Language was taken from 1068.7(d)(3) with minor changes.</p> <p>The requirement demonstrates a commitment to the market and deters from short-term depooling of milk.</p>
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<p><u>(d) Two or more supply plants or two or more reserve supply plants which are operated by the same handler or by one or more cooperative associations may qualify for pooling as a [unit] system by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant if the handler submits a written request to the market administrator prior to the first day of [September] requesting that such plants qualify as a [unit] system for the period of [September] through [August] of the following year.</u></p> <p><u>The request shall list the plants to be included in the [unit] system in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire [unit] system for pooling, the plant last on the list shall be excluded from the [unit] system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining plants on the list have met the minimum shipping requirements. Each plant that qualifies as a pool plant within a [unit] system shall continue each month as a plant in the [unit] system through the following [August] unless the plant fails subsequently to qualify for pooling or the handler submits a written request to the market administrator prior to the first day of the month that the plant be deleted from the [unit] system or that the [unit] system be discontinued. Any plant that has been so deleted from the [unit] system, or that has failed to qualify in any month, will not be part of the [unit] system for the remaining months through [August]. No plant may be added in any subsequent month through the following [August] to a [unit] system that qualifies in [September].</u></p>	<p>(d) Two or more supply plants or two or more reserve supply plants which are operated by the same handler or by one or more cooperative associations may qualify for pooling as a system by meeting the applicable percentage requirements of this paragraph in the same manner as a single plant if the handler submits a written request to the market administrator prior to the first day of _____ requesting that such plants qualify as a system for the period of _____ through _____ of the following year.</p> <p>The request shall list the plants to be included in the system in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the plant last on the list shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining plants on the list have met the minimum shipping requirements. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following _____ unless the plant fails subsequently to qualify for pooling or the handler submits a written request to the market administrator prior to the first day of the month that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify in any month, will not be part of the system for the remaining months through _____. No plant may be added in any subsequent month through the following _____ to a system that qualifies in _____.</p>	<p>Provision added to allow pool status for systems of supply plants or systems of reserve supply plants. The status is intended to be annual. The month that the system year begins to be recommended by Regional Committees.</p> <p>The language was taken from 1079(7)(b)(2)(iv)</p> <p>Refer to first paragraph of this subsection (d). The Committee recommends maintaining the same annual period as above for this restriction.</p>
<p>[(e) A plant located within the marketing area (other than a producer-handler plant, a governmental agency plant, or a plant described in (a)(4) of this section) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area].</p>		

<p><u>(e) A plant located within the marketing area that qualifies as a distributing plant under section .7(a) and which is not excluded under paragraph (i)(3) of this section. This shall not apply to a producer-handler plant, a governmental agency plant, or a plant described in (a)(4) of this section.</u></p>	<p>(e) A plant located within the marketing area that qualifies as a distributing plant under section .7(a) and which is not excluded under paragraph (i)(3) of this section. This shall not apply to a producer-handler plant, a governmental agency plant, or a plant described in (a)(4) of this section.</p>	<p>Wording in (e) is changed for purposes of simplicity. The language also limits the lock-in to those plants located in the marketing area which have no clear majority route sales in any single marketing area, but does not apply to plants that distribute extended shelf life products.</p>
<p><u>(f) A plant not located in any marketing area that qualifies as a distributing plant under section .7(a) of more than one Federal order, provided that the plant has a plurality of route disposition in the marketing area. The plant shall retain its status as a pool plant until the third consecutive month in which route disposition is greater in another Federal order marketing area.</u></p>	<p>(f) A plant not located in any marketing area that qualifies as a distributing plant under section .7(a) of more than one Federal order, provided that the plant has a plurality of route disposition in the marketing area. The plant shall retain its status as a pool plant until the third consecutive month in which route disposition is greater in another Federal order marketing area.</p>	<p>Subsection added to define the regulating order and include as pool plants those plants located in unregulated areas that meet the qualification of pool distributing plant in more than one marketing area but have less than 50 percent route disposition in each marketing area. The time element was added to avoid the disorderly marketing and confusion that can result from frequent switching among orders.</p>
<p>(g) Two or more plants operated by the same handler and [that are] located [within] <u>in</u> the [Southeast] marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements <u>of a pool distributing plant</u> specified in paragraph (a) of this section and the following additional requirements:</p> <p>(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;</p> <p>(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph [(e)](g)(1) of this section; and</p> <p>(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective[.] <u>and shall remain in effect until the market administrator is notified otherwise.</u></p>	<p>(g) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and the following additional requirements:</p> <p>(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;</p> <p>(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (g)(1) of this section; and</p> <p>(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective and shall remain in effect until the market administrator is notified otherwise.</p>	<p>Simplification and conforming changes.</p>

<p>[ (f) The applicable percentages in paragraphs (a) through (c) of this section may be increased or decreased up to 10 percentage points by the market administrator if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is</p>		<p>Removed and replaced at §100X.7(h) with Order 4 language that allows the market administrator more flexibility to respond to changing market conditions.</p>
<p>being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.]</p>		
<p><i><u>(h) The applicable shipping percentage of paragraphs [(a)] (b) and (c) of this section may be increased or decreased by the market administrator if the market administrator finds that the revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.</u></i></p>	<p>(h) The applicable shipping percentage of paragraphs (b) and (c) of this section may be increased or decreased by the market administrator if the market administrator finds that the revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.</p>	<p>To meet temporary or changing local conditions, the market administrator is able to adjust the shipping requirements for supply plants and reserve supply plants. There is no foreseeable situation for which the market administrator would or could adjust the qualifications for pool distributing plant status without conducting a formal hearing. The language is from Order 4.</p>
<p>(i) The term pool plant shall not apply to the following plants:</p> <ul style="list-style-type: none"> <li>(1) A producer-handler plant;</li> <li>(2) An exempt plant as defined in §100X.8(e);</li> </ul>	<p>(i) The term pool plant shall not apply to the following plants:</p> <ul style="list-style-type: none"> <li>(1) A producer-handler plant;</li> <li>(2) An exempt plant as defined in §100X.8(e);</li> </ul>	

<p>(3) A plant qualified pursuant to paragraph (a) <i>or (g)</i> of this section which [is not located within the Southeast marketing area,] meets the pooling requirements of another Federal order, and <u>from which more than 50 percent of its route distribution has been</u> [had greater sales] in [such] <i>the</i> other Federal order marketing area for three consecutive months[, ] [including the current month];</p>	<p>(3) A plant qualified pursuant to paragraph (a) or (g) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route distribution has been in the other Federal order marketing area for three consecutive months;</p>	<p>The modified language in this paragraph allows a plant to be pooled based on route disposition rather than on location when the majority of such disposition is in another marketing area.</p> <p>The words “including the current month” are redundant.</p>
<p>[ (4) A plant qualified pursuant to paragraph (a) of this section which is located in another order's marketing area and which is required to be regulated under such other order because of its location within the other order's marketing area;] and</p>		<p>This subsection is not necessary with the addition of Section .7(e) and .7(f).</p>
<p>[ (5) ] <i>(4)</i> A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under [such] <i>the</i> other Federal order than are made to plants regulated under this part, or [such] <i>the</i> plant has automatic pooling status under [such] <i>the</i> other Federal order.</p>	<p>(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under this part, or the plant has automatic pooling status under the other Federal order;</p>	
<p><u>(5) A plant qualified pursuant to paragraph (c) of this section for which the operator has requested nonpool status for the month. The nonpool status shall remain in effect through the following June.</u></p>	<p>(5) A plant qualified pursuant to paragraph (c) of this section for which the operator has requested nonpool status for the month. The nonpool status shall remain in effect through the following June; and</p>	<p>The addition of this paragraph ensures that a plant depooled under section ( c ) above remains depooled until the following July 1. This is to deter depooling which could destabilize the market.</p>
<p><u>(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.</u></p>	<p>(6) That portion of a plant that is not approved by a duly constituted regulatory agency for the receiving, processing or packaging of any fluid milk product for fluid disposition and is physically separated from the portion of the plant having such approval.</p>	<p>Grade B milk is never qualified for the fluid market, and so should not be considered for pooling purposes.</p>
<p><b>§100X.8 Nonpool plant.</b></p> <p>Nonpool plant means any milk [or filled milk] receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:</p>	<p><b>§100X.8 Nonpool plant.</b></p> <p>Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:</p>	

(a) Other <u>Federal</u> order plant means a plant that is fully subject to the pricing and pooling provisions of another <u>Federal</u> order [issued pursuant to the Act].	(a) Other Federal order plant means a plant that is fully subject to the pricing and pooling provisions of another Federal order;	“Federal” is added to “other order” throughout all provisions for clarity to differentiate from state orders.  The phrase “issued pursuant to the Act” is unnecessary verbiage - all Federal orders are issued pursuant to the Act.
(b) Producer-handler plant means a plant operated by a producer-handler as defined in any order [(including this part) issued pursuant to the Act].	(b) Producer-handler plant means a plant operated by a producer-handler as defined in any Federal order;	Unnecessary verbiage removed as in §100X.8(a).
(c) Partially regulated distributing plant means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition [in consumer-type packages or dispenser units] in the marketing area during the month.	(c) Partially regulated distributing plant means a nonpool plant that is not an other Federal order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month;	(See Section 100X.3 above.)
(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt plant.	(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not an other Federal order plant, a producer-handler plant, or an exempt plant;	
(e) Exempt plant means a plant:  (1) Operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part; or	(e) Exempt plant means a plant:  (1) Operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part; or	
(2) Which has monthly route disposition of [100,000] <u>150,000</u> pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order, but the handler will be required to file [periodic] reports as prescribed by the market administrator to enable determination of the <u>handler's</u> exempt status [of such handler].	(2) Which has monthly route disposition of 150,000 pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order, but the handler will be required to file reports as prescribed by the market administrator to enable determination of the handler's exempt status.	Limitation reflects the highest exemption currently provided for in any Federal order. The word “periodic” adds nothing and is therefore removed. Language simplified.
<b>§100X.9 Handler.</b>  Handler means:  (a) Any person who operates one or more pool plants;	<b>§100X.9 Handler.</b>  Handler means:  (a) Any person who operates one or more pool plants;	

<i>(b) Any person who operates any other plant, or who operates a unit pursuant to §100X.9(c) as defined under any Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area.</i>	(b) Any person who operates any other plant, or who operates a unit pursuant to §100X.9(c) as defined under any Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area;	Language from Order No. 1 to encompass partially regulated plants, producer-handlers, other Federal order cooperative units, exempt plants, and any entity delivering fluid milk products in the marketing area.
[(b) Any cooperative with respect to producer milk which it causes to be diverted pursuant to §100X.13 for the account of such cooperative association;]		Removed and included in §100X.9(c).
(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer [for delivery] <u>and delivers</u> to [a] pool plants [of another handler] <u>or as diverted milk to nonpool plants pursuant to 100X.13</u> [in a tank truck owned and operated by, or under the control of, [such] <u>the</u> cooperative association,] unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that [such] <u>the</u> milk is delivered to the pool plant that the plant operator will be the handler of [such] <u>the</u> milk and will purchase [such] <u>the</u> milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be [deemed to have been received by the cooperative association] <u>priced</u> at the location of the [pool] plant to which [such] <u>the</u> milk is delivered;	(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to §100X.13 unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that the milk is delivered to the pool plant that the plant operator will be the handler of the milk and will purchase the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be priced at the location of the plant to which the milk is delivered;	Combines paragraphs §100X.9(b) and §100X.9(c) to include cooperative units and pool plants operated by the cooperative in one paragraph.
[(d) Any person who operates a partially regulated distributing plant;]		Redundant with addition of (b).
[(e) A producer-handler;]		Redundant with addition of (b).
[(f)](d) Any person who operates an other <u>Federal</u> order plant described in §100X.8(a);	(d) Any person who operates an other Federal order plant described in §100X.8(a);	
[(g)] <u>(e)</u> Any person who operates an unregulated supply plant; [and]	(e) Any person who operates an unregulated supply plant;	
[(h) Any person who operates an exempt plant]		Redundant with addition of (b).

<p><u>(f) Any person who does not operate a plant but who engages in the business of receiving from any plant described in paragraph (a) or (b) of this section fluid milk products for resale and distributing to retail or wholesale outlets packaged fluid milk products, and any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any plant described in paragraph (a) or (b) of this section, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.</u></p>	<p>(f) Any person who does not operate a plant but who engages in the business of receiving from any plant described in paragraph (a) or (b) of this section fluid milk products for resale and distributing to retail or wholesale outlets packaged fluid milk products, and any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any plant described in paragraph (a) or (b) of this section, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant.</p>	<p>Added to cover three types of brokers from whom reports are sought for market information and verification of utilization. The language is from Orders Nos. 1, 30, and 4, respectively.</p>
<p><b>§100X.10 Producer-handler</b></p> <p><u>Except as provided in paragraph (g) of this section, producer-handler means a person who:</u></p>	<p><b>§100X.10 Producer-handler.</b></p> <p>Except as provided in paragraph (g) of this section, “producer-handler” means a person who:</p>	
<p>(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of [100,000] <u>150,000</u> pounds [per] <u>during the</u> month;</p>	<p>(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 150,000 pounds during the month;</p>	<p>See .8(e)(2) regarding quantity limitation.</p> <p>“During the month” replaces “per month” to clarify that the qualification pertains to each month separately.</p>
<p>(b) Receives no [Class I milk] <u>fluid milk products</u> from sources other than [his/her] own farm production and pool [plants] <u>handlers</u>;</p>	<p>(b) Receives no fluid milk products from sources other than own farm production and pool handlers;</p>	<p>Language simplified and clarified.</p>
<p><u>(c) Receives no more than 150,000 pounds of fluid milk products from pool handlers, including such products received at a location other than the producer-handler’s processing plant for distribution on routes. This limitation shall not apply if the producer-handler’s own farm production is less than 150,000 pounds during the month.</u></p>	<p>(c) Receives no more than 150,000 pounds of fluid milk products from pool handlers, including such products received at a location other than the producer-handler’s processing plant for distribution on routes. This limitation shall not apply if the producer-handler’s own farm production is less than 150,000 pounds during the month.</p>	<p>Added to limit receipts of supplemental pool milk by producer-handlers with significant route sales yet allow small producer-handlers with little market impact more flexibility in purchasing quantities from pool handlers.</p>
<p>(d)[(c)] Disposes of no other source milk as Class I milk <u>except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool plants; and</u></p>	<p>(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production or pool handlers;</p>	<p>Limits receipt of other source milk for purposes other than fortification.</p>
<p><u>(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to wholesale or retail outlets or to a pool handler;</u></p>	<p>(e) Disposes of no fluid milk products using the distribution system of another handler except for direct deliveries to wholesale or retail outlets or to a pool handler;</p>	<p>To prevent producer-handlers from balancing through the distribution system of a pool plant, circumventing pricing provisions.</p>

[(d)] <u>(f)</u> Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the [operation of the] processing, [and] <u>packaging, and distribution</u> [business] <u>operations</u> are [his/her] <u>the producer-handler's</u> own [personal] enterprise and <u>at its own</u> [personal] risk; <u>and</u>	(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the processing, packaging, and distribution operations are the producer-handler's own enterprise and at its own risk; and	Added requirement of responsibility and assumption of risk for distribution.
<u>(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under 100X.7(a) and the farm operated as a producer under 100X.12.</u>	(g) Producer-handler shall not include any producer who also operates a distributing plant if the producer-handler so requests that the two be operated as separate entities with the distributing plant regulated under §100X.7(a) and the farm operated as a producer under §100X.12.	Provides optional pool handler status for producer-handler.
<b>§100X.11 Reserved</b>	<b>§100X.11 Reserved.</b>	Dairy farmer for other markets provision simplified and included in §100X.12 (4), (5) and (6).
<b>§100X.12 Producer.</b>  (a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:	<b>§100X.12 Producer.</b>  (a) Except as provided in paragraph (b) of this section, producer means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:	
(1) Received at a pool plant directly from [such] <u>the producer[;] or diverted by the plant operator in accordance with §100X.13;</u>	(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with §100X.13.	
(2) Received by a handler described in §100X.(9)(c)[; or].	(2) Received by a handler described in §100X.(9)(c).	
[(3) Diverted from a pool plant in accordance with §100X.13.]		Combined with (1).
(b) Producer shall not include:	(b) Producer shall not include:	
(1) A producer-handler as defined in any order [(including this part) issued pursuant to the Act];	(1) A producer-handler as defined in any Federal order;	Unnecessary verbiage removed as in §100X.8(a).
(2) [Any person with respect to milk produced by such person] <u>A dairy farmer</u> whose milk is delivered to an exempt plant, excluding producer milk diverted to [such] <u>the</u> exempt plant pursuant to §100X.13;	(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to §100X.13;	Language simplified.

<p>(3) Any person [with respect to] <u>whose</u> milk [produced by such person which] is diverted to a pool plant from an other <u>Federal</u> order [plant] <u>handler</u> if the other <u>Federal</u> order [plant] <u>handler</u> designates [such person] <u>the dairy farmer</u> as a producer under that order [and such milk is allocated to Class II or Class III utilization pursuant to 100X.44(a)(8)(iii) and the corresponding step of 100X.44(b); or].</p>	<p>(3) A dairy farmer whose milk is diverted to a pool plant from an other Federal order handler if the other Federal order handler designates the dairy farmer as a producer under that order.</p>	<p>The use of “handler” in place of “plant” extends the meaning of the subparagraph to include the operator of a 9(c) unit. As instructed by the Classification Committee, milk delivered would be producer milk in the selling market regardless of how it is allocated in receiving market. Such movement would be treated the same as plant to plant transfers. If the Classification Committee recommendation is not adopted, this subsection should reflect language indicated in column 1.</p>
<p>[(4) Any person with respect to milk produced by such person which is reported as diverted to an other <u>federal</u> order plant if any portion of such person’s milk so moved is assigned to Class I under the provisions of such other federal order.]</p>		<p>Deleted as instructed by the Classification Committee. If the Classification Committee recommendation is not adopted, this subsection should reflect language indicated in column 1.</p>
<p><u>(4) For any month of ____ (1)* ____ through ____ (1)* ____, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month or in either of the two preceding months. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13;</u></p>	<p>(4) For any month of ____ (1)* ____ through ____ (1)* ____, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month or in either of the two preceding months. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13;</p>	<p>This section added to discourage depooling milk during months other than the “short” season.</p>
<p><u>(5) For any month of ____ (2)* ____ through ____ (2)* ____, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13;</u></p>	<p>(5) For any month of ____ (2)* ____ through ____ (2)* ____, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13;</p>	<p>This section added to discourage balancing on the pool by unregulated plants or state order markets. It also allows milk to be depooled on a monthly basis by regulated handlers.</p>
		<p>*References to (1) and (2) in Sections 100X.12(b)(4) through 100X.12(b)(6) provide for distinguishing the short season from the rest of the year. (2) = short season, (1) = rest of the year.</p>

<p><u>(6) Any dairy farmer whose milk is received by a pool plant or a cooperative association under Section 100X.9(c) during any of the months of (1)* through (1)* if the handler caused milk from the same farm to be moved as nonpool milk during any of the preceding months of (2)* through (2)*. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13.</u></p>	<p>(6) Any dairy farmer whose milk is received by a pool plant or a cooperative association under Section 100X.9(c) during any of the months of ____ (1)* ____ through ____ (1)* ____ if the handler caused milk from the same farm to be moved as nonpool milk during any of the preceding months of ____ (2)* ____ through ____ (2)* ____ . This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order or if the nonpool milk is the result of the handler exceeding the diversion limitations as provided in §100X.13.</p>	<p>This subsection added to discourage depooling milk during the short season and then reassociating with the pool during the flush. The months will be recommended by the Regional Committees in accordance with local seasonality.</p>
		<p>*References to (1) and (2) in Sections 100X.12(b)(4) through 100X.12(b)(6) provide for distinguishing the short season from the rest of the year. (2) = short season, (1) = rest of the year.</p>
<p><b>§100X.13 Producer milk.</b></p> <p>Producer milk means the skim milk and butterfat contained in milk of a producer that is:</p>	<p><b>§100X.13 Producer milk.</b></p> <p>Producer milk means the skim milk and butterfat contained in milk of a producer that is:</p>	
<p>(a) [Received by the operator of a pool plant directly from such producer.] <u>Received by the operator of a pool plant directly from a producer or a handler described in 100X.9(c). Any milk picked up from the producer's farm tank in a tank truck under the control of the operator of a pool plant or a handler described in 100X.(9)(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month;</u></p>	<p>(a) Received by the operator of a pool plant directly from a producer or from a handler described in 100X.9(c). Any milk picked up from the producer's farm but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month;</p>	<p>To clarify date of receipt with respect to milk picked up on the last day of the month.</p>
<p>(b) Received by a handler described in 100X.9(c) <u>in excess of the quantity delivered to pool plants</u> if the handler has met the qualifying shipping requirements as described in section 100X.7(c).</p>	<p>(b) Received by a handler described in 100X.(9)(c) in excess of the quantity delivered to pool plants if the handler has met the qualifying shipping requirements as described in 100X.7(c);</p>	
<p>(c) Diverted from a pool plant [to the pool plant of another handler] <u>of a proprietary handler to another pool plant</u>. Milk so diverted shall be [deemed for pricing purposes to have been received] at the location of the plant to which diverted; or</p>	<p>(c) Diverted from a pool plant of a proprietary handler to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or</p>	

<p>(d) Diverted by the operator of a pool plant or cooperative association <u>under §100X.9(c)</u> to a nonpool plant [that is not a producer-handler plant], subject to the following conditions:</p>	<p>(d) Diverted by the operator of a pool plant or cooperative association under 100X.9(c) to a nonpool plant, subject to the following conditions:</p>	<p>Clarification</p>
<p><u>(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant.</u></p> <p style="text-align: center;"><b><u>OR</u></b></p> <p><u>(1) On not less than _____ days in any month of _____ through _____, and on not less than _____ days in any month of _____ through _____, the handler caused all the milk from the farm to be physically received at a pool plant.</u></p>	<p>(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses his producer status under this order (except as a result of a temporary loss of Grade A approval), his milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant.</p> <p style="text-align: center;"><b>OR</b></p> <p>(1) On not less than ____ days in any month of ____ through _____, and on not less than ____ days in any month of _____ through _____, the handler caused all the milk from the farm to be physically received at a pool plant.</p>	<p>The issue of additional producer association requirements or adding diversion limitations should be left open to be addressed by Regional Committees. These uniform provisions currently have virtually no limitations and minimal requirements for producer association with the market. The Committee believes that outside of the orders in the Southeast, there is probably no reason for additional requirements for producer association with an order.</p>
<p><u>(2) Of the total quantity of producer milk received during the month (including diversions), the handler diverted to nonpool plants not more than _____ percent during the months of _____ through _____, or _____ percent during the months of _____ through _____.</u></p>	<p>(2) Of the total quantity of producer milk received during the month (including diversions), the handler diverted to nonpool plants not more than ____ percent during the months of _____ through _____, or ____ percent during the months of _____ through _____.</p>	<p>The Committee believes that outside of the southern marketing orders it may be unnecessary to include additional diversion limitations: the percentage would effectively be set at 100% or the reciprocal of the qualification requirement. However, the disorderly conditions that may arise cannot be addressed by this Committee because as yet there is no known pricing structure, no known location adjustments, and no known marketing areas. After the pricing and marketing areas are established, Regional Committees should be able to determine if limits are necessary. The Identical Provisions Committee suggests that the diversion limitations be the reciprocal of the supply plant shipping requirements in §100X.7(b.)</p> <p>If such provisions are found to be necessary, the Committee recommends this uniform language.</p>

<u>(3) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk.</u>	(3) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk.	
<u>(4) Diverted milk shall priced at the location of the plant to which diverted.</u>	(4) Diverted milk shall priced at the location of the plant to which diverted.	
<u>(5) The delivery day requirements or the applicable percentages in paragraphs (d)(1) and (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that a revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of such percentages or delivery requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any decision to revise an applicable percentage or delivery requirement must be issued in writing seven days before the effective date.</u>	(5) The delivery day requirements or the applicable percentages in paragraphs (d)(1) and (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that a revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of such percentages or delivery requirements might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any decision to revise an applicable percentage or delivery requirement must be issued in writing seven days before the effective date.	
<b>§100X.14 Other Source Milk</b>	<b>§100X.14 Other Source Milk</b>	To be determined by Classification Committee
<b>§100X.15 Fluid Milk Products</b>	<b>§100X.15 Fluid Milk Products</b>	To be determined by Classification Committee
<b>§100X.16 Fluid Cream Products</b>	<b>§100X.16 Fluid Cream Products</b>	To be determined by Classification Committee
<b>§100X.17 Filled Milk</b>	<b>§100X.17 Filled Milk</b>	To be determined by Classification Committee
<b>§100X.18 Cooperative Association</b>  Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:	<b>§100X.18 Cooperative Association</b>  Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:	

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the “Capper-Volstead Act”;	(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the “Capper-Volstead Act”;	
(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing, milk or milk products for its members; and	(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing, milk or milk products for its members; and	
<u>(c) Has its entire activities under the control of its members.</u>	(c) Has its entire activities under the control of its members.	Addition of (c) reflects language which currently exists in most orders.
<u>(d) A federation of two or more cooperatives incorporated under the laws of a state, if all member cooperatives meet the requirements of (a), (b), and (c) of this section.</u>	(d) A federation of two or more cooperatives incorporated under the laws of a state, if all member cooperatives meet the requirements of (a), (b), and (c) of this section.	Federations exist and in the provisions of some marketing orders (2,4, and 139) are allowed to operate for the purposes of pooling and payments. They should be recognized for these purposes in uniform provisions

HANDLER REPORTS	HANDLER REPORTS	
§100X.30 Reports of receipts and utilization.	§100X.30 Reports of receipts and utilization.	
[On or before the fifth day after the end of the month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator,] <u>Each handler shall report [for such] monthly [to] <i>so that</i> the market administrator's office receives the report on or before the eighth day after the end of the month, in the detail and on the prescribed forms [prescribed by the market administrator], as follows:</u>	Each handler shall report monthly so that the market administrator's office receives the report on or before the eighth day after the end of the month, in the detail and on the prescribed forms, as follows:	The reporting date would be the eighth of the month. After a review of the dates in all orders, it was decided the eighth would be most acceptable. All dates in following provisions were established from this. Language regarding what constitutes timely reporting was clarified.
(a) [Each handler,] with respect to each of its pool plants, [shall report] the quantities of skim milk, and butterfat contained in or represented by:	(a) With respect to each of its pool plants, the quantities of skim milk, and butterfat contained in or represented by:	
(1) Receipts of producer milk, including producer milk diverted by the [handler from the pool plant] <u>plant operator</u> to other plants <u>{and pounds of protein, nonfat milk solids, and somatic cell count contained in such receipts}</u> ;	(1) Receipts of producer milk, including producer milk diverted by the plant operator to other plants;	Language simplification  {To be determined by component pricing.}
(2) Receipts of milk from handlers described in §100X.9(c) <u>{and pounds of protein, nonfat milk solids, and somatic cell count contained in such receipts}</u> ;	(2) Receipts of milk from handlers described in §100X.9(c);	{To be determined by component pricing.}
(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;	(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;	
(4) Receipts of other source milk;	(4) Receipts of other source milk;	
(5) Inventories at the beginning and end of the month of fluid milk products and products specified in §100X.40(b)(1); and	(5) Inventories at the beginning and end of the month of fluid milk products and products specified in §100X.40(b)(1); and	
(6) The utilization or disposition of all milk[, filled milk,] and milk products required to be reported pursuant to this paragraph.	(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.	
(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required be paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. [Such] <u>The</u> report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.	(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required be paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.	

(c) Each handler described in §100X.9(b) and] (c) shall report:	(c) Each handler described in §100X.9(c) shall report:	
(1) The quantities of skim milk { <u>milk protein, nonfat milk solids, somatic cell count.</u> } and butterfat contained in receipts from producers; and	1) The quantities of skim milk and butterfat contained in receipts from producers; and	{To be determined by component pricing.}
(2) The utilization or disposition of all such receipts.	(2) The utilization or disposition of all such receipts.	
(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk[, filled milk,] and milk products in such manner as the market administrator may prescribe.	(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.	
<b>§100X.31 Payroll reports.</b>  (a) On or before the [20th] <u>22nd</u> day after the end of each month, each handler described in §100X.9(a)[, (b),] and (c) shall report to the market administrator its producer payroll for [such] <u>the</u> month, in detail prescribed by the market administrator, showing for each producer:	<b>§100X.31 Payroll reports.</b>  (a) On or before the 22nd day after the end of each month, each handler described in §100X.9(a) and (c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer:	Changed to the 22nd.
(1) [Such] <u>The</u> producer's name and address;	(1) The producer's name and address;	
(2) The total pounds of milk received from [such] <u>the</u> producer showing separately the pounds of milk received from the producer on each delivery day;	(2) The total pounds of milk received from the producer showing separately the pounds of milk received from the producer on each delivery day.	
(3) The average butterfat content { <u>,milk protein content, nonfat milk solids content, and somatic cell count</u> } of such milk; and	(3) The average butterfat content of such milk; and	{To be determined by component pricing.}
(4) The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.	(4) The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.	
(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §100X.76(b) shall report for each dairy farmer who would have been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.	(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to §100X.76(b) shall report for each dairy farmer who would have been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.	

<p><b>§100X.32 Other reports.</b></p> <p>[(a) Each handler described in §100X.9(a), (b), and (c) shall report to the market administrator on or before the 7th day after the end of each month of February through May the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through May the pounds of base milk received from each producer during the month. In the case of milk diverted to another plant, the handler shall also report the pounds of base milk of each producer assigned to the divertee plant.]</p>		<p>Delete pending base/excess determination.</p>
<p>[(b)] <u>(a)</u> In addition to the reports required pursuant to [paragraph (a) of this section and] §§100X.30 and 100X.31, each handler shall report [such] <u>any</u> information [as] the market administrator deems necessary to verify or establish each handler's obligation under the order.</p>	<p>(a) In addition to the reports required pursuant to §§100X.30 and 100X.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.</p>	<p>Paragraph (b) designation changed to (a).</p>
<p><b>§100X.45 Market administrator's reports and announcements concerning classification.</b></p> <p>The market administrator shall make the following reports and announcements concerning classification:</p>	<p><b>§100X.45 Market administrator's reports and announcements concerning classification.</b></p> <p>The market administrator shall make the following reports and announcements concerning classification:</p>	
<p>(a) Whenever required for the purpose of allocating receipts from other <u>Federal</u> order plants pursuant to §100X.44(a)(12) and the corresponding step of §100X.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. [Such] The estimate shall be based upon the most current available data and shall be final for such purpose.</p>	<p>(a) Whenever required for the purpose of allocating receipts from other Federal order plants pursuant to §100X.44(a)(12) and the corresponding step of §100X.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.</p>	

<p>(b) [Report] To the respective <u>other Federal order</u> market administrators [of the other <u>Federal</u> order], as soon as possible after the <u>handlers'</u> reports of receipts and utilization [for the month is] <u>are</u> received, [from a handler who has received fluid milk products or bulk fluid cream products from an other <u>Federal</u> order plant,] the class to which [such] receipts from other Federal order plants are allocated pursuant to §§100X.43(d) and 100X.44 [on the basis of such report] (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in allocation required to correct errors disclosed in the verification of such report.</p>	<p>(b) To the respective other Federal order market administrators, as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from other Federal order plants are allocated pursuant to §§100X.43(d) and 100X.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.</p>	<p>Language simplification.</p>
<p>(c) Furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other <u>Federal</u> order plant the class to which [such] the shipments were allocated by the market administrator of the other <u>Federal</u> order on the basis of the report by the receiving handler, and, as necessary, any changes in [such] <u>the</u> allocation arising from the verification of such report.</p>	<p>(c) Furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other Federal order plant the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler, and, as necessary, any changes in the allocation arising from the verification of such report.</p>	
<p>(d) [On or before the 12th day after the end of each month,] <u>Report</u> to each cooperative association which so requests, the percentage of producer milk delivered by members of [such] <u>the</u> association that was used in each class by each handler receiving [such] <u>the</u> milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by [such] <u>the</u> handler.</p>	<p>(d) Report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.</p>	<p>Remove date requirement.</p>
<p><b>§100X.53 Announcement of class prices.</b></p> <p>The market administrator shall announce publicly on or before the fifth day of each month the Class I price and Class II prices for the following month, and the Class III and III-A prices for the preceding month.</p>	<p><b>§100X.53 Announcement of class prices.</b></p> <p>The market administrator shall announce publicly on or before the fifth day of each month the Class I price and Class II prices for the following month, and the Class III and III-A prices for the preceding month</p>	
<p><b>§100X.54 Equivalent price.</b></p> <p>If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the [Secretary] <u>Director of the Dairy Division</u> to be equivalent to the price or pricing constituent that is required.</p>	<p><b>§100X.54 Equivalent price.</b></p> <p>If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Director of the Dairy Division to be equivalent to the price or pricing constituent that is required.</p>	

<p><b>§100X.62 Announcement of uniform price and butterfat differential.</b></p> <p>The market administrator shall announce publicly on or before:</p>	<p><b>§100X.62 Announcement of uniform price and butterfat differential.</b></p> <p>The market administrator shall announce publicly on or before:</p>	
<p>(a) The fifth day after the end of each month the butterfat differential for such month; and</p>	<p>(a) The fifth day after the end of each month the butterfat differential for such month; and</p>	
<p>(b) The [11th] <u>13th</u> day after the end of the month the applicable uniform price[(s)] pursuant to §100X.61 for such month.</p>	<p>(b) The 13th day after the end of the month the applicable uniform price pursuant to §100X.61 for such month.</p>	<p>Change the announcement date from the 11th to the 13th.</p>
<p><b>PAYMENTS FOR MILK</b></p> <p><b>§100X.70 Producer-settlement fund.</b></p> <p>The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§100X.71, 100X.76, and 100X.77, and out of which the market administrator shall make all payments pursuant to §§100X.72 and 100X.77. Payments due any handler shall be offset by any payments due from [such] <u>that</u> handler.</p>	<p><b>PAYMENTS FOR MILK</b></p> <p><b>§100X.70 Producer-settlement fund.</b></p> <p>The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§100X.71, 100X.76, and 100X.77, and out of which the market administrator shall make all payments pursuant to §§100X.72 and 100X.77. Payments due any handler shall be offset by any payments due from that handler.</p>	
<p><b>§100X.71 Payments to the producer-settlement fund.</b></p> <p>(a) [On or before the 12th day after the end of the month, each handler shall pay to the market administrator] <u>Each handler shall make remittance to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month. If the 15th is a Saturday, Sunday, or national holiday the funds must be received not later than the next day on which the market administrator's office is open for public business. Payment shall be</u> the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:</p>	<p><b>§100X.71 Payments to the producer-settlement fund.</b></p> <p>(a) Each handler shall make remittance to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month. If the 15th is a Saturday, Sunday, or national holiday the funds must be received not later than the next day on which the market administrator's office is open for public business. Payment shall be the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:</p>	<p>Due date for payments to the producer-settlement fund changed from the 12th to the 15th.</p> <p>Payments must be <u>received</u> in order to be considered paid.</p> <p>Allowance is made for instances where payment due dates fall on Saturday, Sunday, or national holiday.</p>
<p>(1) The total value of milk of the handler for [such] <u>the</u> month as determined pursuant to §100X.60.</p>	<p>(1) The total value of milk of the handler for the month as determined pursuant to §100X.60.</p>	

<p>(2) The sum of[:] [(i)] [T]he value at the uniform price(s) as adjusted pursuant to §100X.75, of [such] <u>the</u> handler's receipts of producer milk and milk received from handlers pursuant to §100X.9(c); and [(ii)] [T]he value at the [weighted average] <u>uniform</u> price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §100X.60(f).</p>	<p>(2) The sum of the value at the uniform price(s) as adjusted pursuant to §100X.75, of the handler's receipts of producer milk and milk received from handlers pursuant to §100X.9(c); and the value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to §100X.60(f).</p>	<p>Reference to "weighted average" price deleted pending base/excess determination.</p>
<p>[(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:]</p>		<p>Deleted payment reference for individual-handler pools. In order to accomplish uniform marketing orders, only marketwide pools should be recognized.</p>
<p>(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and]</p>		<p>Deleted payment reference for individual-handler pools. In order to accomplish uniform marketing orders, only marketwide pools should be recognized.</p>
<p>(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by the difference between the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.]</p>		<p>Deleted payment reference for individual-handler pools. In order to accomplish uniform marketing orders, only marketwide pools should be recognized.</p>

<p><b>§100X.72 Payments from the producer-settlement fund.</b></p> <p>[On or before the 13th day after the end of each month] <u>No later than one day after the date of payment receipt required under §100X.71(a)</u>, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §100X.71(a)(2) exceeds the amount computed pursuant to §100X.71(a)(1). <u>If the payment date is a Saturday, Sunday or national holiday, the payment shall be made not later than the next day on which the market administrator's office is open for public business.</u> If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete [such] <u>the</u> payments as soon as the funds are available.</p>	<p><b>§100X.72 Payments from the producer-settlement fund.</b></p> <p>No later than one day after the date of payment receipt required under §100X.71(a), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to §100X.71(a)(2) exceeds the amount computed pursuant to §100X.71(a)(1). If the payment date is a Saturday, Sunday or national holiday, the payment shall be made not later than the next day on which the market administrator's office is open for public business. If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.</p>	<p>Payout to be made one day after payments to the producer-settlement fund are made.</p> <p>Recognition of payment dates falling on a Saturday, Sunday, or national holiday consistent with similar provision in 100X.71(a).</p>
<p><b>§100X.73 Payments to producers and to cooperative associations.</b></p> <p>(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:</p>	<p><b>§100X.73 Payments to producers and to cooperative associations</b></p> <p>(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:</p>	
<p>(1) [On or before the 26th day of each month,] <u>Payment shall be made so that it is received by each producer on or before the 26th day of the month</u> for milk received during the first 15 days of the month from [such] <u>the</u> producer [who has not discontinued delivery of milk to such handler before the 23rd day of the month] at not less than the Class III price <u>per hundredweight</u> for the preceding month [or 90 percent of the weighted average price for the preceding month, whichever is higher], less proper deductions authorized in writing by the producer. [If the producer had discontinued shipping milk to such handler before the 25th day of any month, or if the producer had no established base upon which to receive payments during the base paying months of February through May, the applicable rate for making payments to such producer shall be the Class III price for the preceding month]; and</p>	<p>(1) Payment shall be made so that it is received by each producer on or before the 26th day of the month for milk received during the first 15 days of the month from the producer at not less than the Class III price per hundredweight for the preceding month, less proper deductions authorized in writing by the producer; and</p>	<p>Advanced payment to be received by the 26th day of the month for the first 15 days production at prior month's Class III price.</p> <p>Delete pending base/excess determination.</p>

<p>(2) <u>Payment shall be made so that it is received by each producer</u> [on or before the <u>[15th] 18th</u> day of the following month] <u>no later than the day after the payment date required in §100X.72</u> in an amount equal to not less than the uniform price[(s)] <u>per hundredweight</u>, as adjusted <u>for butterfat</u> pursuant to §100X.74 and <u>plant location pursuant to</u> §100X.75, [multiplied by the hundredweight of milk or base milk and excess milk received from [such] <u>the</u> producer during the month., subject to the following adjustments:] <u>The producer payment can be reduced subject to:</u> [(i) Less] payments made to [such] <u>the</u> producer pursuant to paragraph (a)(1) of this section; [(ii) Less] deductions for marketing services [made pursuant to §100X.86]; [(iii)] plus or minus adjustments for errors made in previous payments made to [such] <u>the</u> producer[s]; and [(iv) Less] proper deductions authorized in writing by [such] <u>the</u> producer.</p>	<p>(2) Payment shall be made so that it is received by each producer no later than the day after the payment date required in §100X.72 in an amount equal to not less than the uniform price per hundredweight, as adjusted for butterfat pursuant to §100X.74 and plant location pursuant to §100X.75. The producer payment can be reduced subject to: payments made to the producer pursuant to paragraph (a)(1) of this section; deductions for marketing services; plus or minus adjustments for errors made in previous payments made to the producer; and proper deductions authorized in writing by the producer.</p>	<p>Final payment to be received by one day after payment from the producer-settlement fund.</p> <p>Minor language changes for clarification.</p> <p>Delete pending base/excess determination.</p>
<p>[(3) If a handler has not received full payment from the market administrator pursuant to §100X.72 by the 15th day of such month, such handler may reduce payments pursuant to this paragraph to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.]</p>		<p>Language in §100X.73(a)(3), §100X.73(c), and §100X.73(d) consolidated into §100X.73(e).</p>
<p>(b) On or before the day prior to the dates specified in paragraph (a)(1) and <u>(a)(2)</u> of this section, each handler shall [make payment] <u>pay</u> to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a)(1) and <u>(a)(2)</u> of this section.</p>	<p>(b) On or before the day prior to the dates specified in paragraph (a) (1) and (a) (2) of this section, each handler shall pay to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a)(1) and (a) (2) of this section.</p>	<p>The change - Cooperative payment is one day prior.</p>

<p>[(c) If a handler has not received full payment from the market administrator pursuant to §100X.72 by the 15th day of such month such handler may reduce payments pursuant to paragraph (b) of this section to such cooperative association on a pro rata basis, prorating such underpayment to the volume of milk received from such cooperative association in proportion to the total milk received from producers by the handler, but not by more than the amount of the underpayment. Such payments shall be completed in the following manner:]</p>		<p>Language consolidated with §100X.73(e).</p>
<p>[(1) If the handler receives full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on the 15th day of the month;]</p>		<p>Language consolidated with §100X.73(e).</p>
<p>[(2) If the handler has not received full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on or before the date for making such payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.]</p>		<p>Language consolidated with §100X.73(e).</p>
<p>[(d)] <u>(c) On or before the day prior to the dates specified in paragraph (a)(1) and (a)(2) of this section.</u> [E]ach handler[ pursuant to §100X.9(a)] who receives <u>fluid milk products at its plant</u> from a cooperative association <u>in its capacity as an operator of a pool plant or who receives milk from a cooperative association in its capacity</u> as a handler pursuant to §100X.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized [such] <u>the</u> cooperative association to collect payment for their milk, shall pay [such] <u>the</u> cooperative for such milk as follows:</p>	<p>( c ) On or before the day prior to the dates specified in paragraph (a) (1) and (a) (2) of this section, each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to §100X.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:</p>	<p>Language has been added to include <u>all</u> fluid milk products received from a cooperative association in its capacity <u>as the operator of a pool plant</u> as well as its capacity as a handler pursuant to §100X.9(c). A similar provision exists in Orders Nos. 126, 124, and 1.</p>

<p>(1) [On or before the 25th day of the month] <del>F</del>[f]or <u>bulk milk and bulk skimmed milk received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler under §100X.9(c)</u> during the first 15 days of the month, <u>at</u> not less than the Class III price for the preceding month [or 90 percent of the weighted average price for the preceding month, whichever is higher] and</p>	<p>(1) For bulk milk and bulk skimmed milk received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler under §100X.9(c) during the first 15 days of the month, at not less than the Class III price for the preceding month.</p>	<p>Deleted pending base/excess determination.</p>
<p>(2) <u>For the total quantity of bulk milk and bulk skimmed milk received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of fluid milk products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under §100X.44 by the class price for the month, adjusted for butterfat pursuant to §100X.74 and plant location adjustments pursuant to §100X.75, minus the amount of the payment made to the association pursuant to paragraph ( c ) (1) of this section.</u></p>	<p>(2) For the total quantity of bulk milk and bulk skimmed milk received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of fluid milk products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under §100X.44 by the class price for the month, adjusted for butterfat pursuant to §100X.74 and plant location adjustments pursuant to §100X.75, minus the amount of the payment made to the association pursuant to paragraph ( c ) (1) of this section.</p>	<p>Language added to provide for final payment to cooperative associations in its capacity as the operator of a pool plant.</p>
<p>[(2) On or before the 14th day of the following month, not less than the appropriate uniform price(s) as adjusted pursuant to §1007.74 and §1007.75, and less any payments made pursuant to paragraph (d)(1) of this section.]</p> <p>(3) <u>For the total quantity of milk received from a cooperative association in its capacity as a handler under section §100X.9(c), at not less than the appropriate uniform price as adjusted for butterfat pursuant to §100X.74 and plant location adjustments pursuant to section §100X.75, and less any payments made to the association pursuant to paragraph (c) (1) of this section.</u></p>	<p>(3) For the total quantity of milk received from a cooperative association in its capacity as a handler under section §100X.9(c), at not less than the appropriate uniform price as adjusted for butterfat pursuant to §100X.74 and plant location adjustments pursuant to section §100X.75, and less any payments made to the association pursuant to paragraph (c) (1) of this section.</p>	<p>Added language for clarification.</p>
<p><u>(d) When making the required payments under paragraphs (a), (b) or ( c ) of this section, if the payment receipt date is a Saturday, Sunday or national holiday, the payment shall be made so that it is received not later than the next day on which the market administrator's office is open for public business.</u></p>	<p>(d) When making the required payments under paragraphs (a), (b) or ( c ) of this section, if the payment receipt date is a Saturday, Sunday or national holiday, the payment shall be made so that it is received not later than the next day on which the market administrator's office is open for public business.</p>	<p>Added language consistent with language in §100X.71 and §100X.72.</p>

<p>(e) If a handler has not received full payment from the market administrator pursuant to §100X.72 by the [14th day of such month] <u>payment date specified in paragraph (a), (b), or (c)(2) of this section</u>, [such] <u>the</u> handler may reduce <u>pro rata its</u> payments <u>to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.</u> [pursuant to paragraph (d) of this section to such cooperative association and complete such payments for milk received from such cooperative association in its capacity as a handler pursuant to §100X.9(c), in the manner prescribed in paragraph (c)(1) and (2) of this section.]</p>	<p>(e) If a handler has not received full payment from the market administrator pursuant to §100X.72 by the payment date specified in paragraph (a), (b) or ( c ) (2) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b), prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.</p>	
<p><u>(f) If a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer settlement fund to the handler or to the lawful claimant as the case may be.</u></p>	<p>(f) If a handler claims that he cannot make the required payment because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer settlement fund to the handler or to the lawful claimant as the case may be.</p>	<p>Added language as currently provided in Order No. 2.</p>
<p>[(f)] <u>(g)</u> In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a handler described in §100X.9(c), a supporting statement in [such] <u>a</u> form that it may be retained by the recipient which shall show:</p>	<p>(g) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a handler described in §100X.9(c), a supporting statement in a form that it may be retained by the recipient which shall show:</p>	<p>Section number change.</p>
<p>(1) The month and identity of the producer</p>	<p>(1) The month and identity of the producer</p>	
<p>(2) The daily and total pounds and the average butterfat {<u>protein, and nonfat milk solids</u>} content {<u>and somatic cell count</u>} of producer milk;</p>	<p>(2) The daily and total pounds and the average butterfat content of producer milk;</p>	<p>{To be determined by component pricing.}</p>

[(3) For the months of February through May the total pounds of base milk received from such producer;]		Delete pending base/excess determination.
[(4)](3) The minimum rate(s) at which payment to the producer is required pursuant to this order;	(3) The minimum rate at which payment to the producer is required pursuant to this order;	
[(5)](4) The rate(s) used in making [the] payment if [such] <u>the</u> rate(s) is (are) other than the applicable minimum rate(s);	(4) The rate used in making payment if the rate is other than the applicable minimum rate;	
[(6)](5) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and	(5) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and	
[(7)](6) The net amount of payment to [such ] <u>the</u> producer or cooperative association.	(6) The net amount of payment to the producer or cooperative association.	
<p><b>§100X.74 Butterfat differential.</b></p> <p>For milk containing more or less than 3.5 percent butterfat, the uniform price[s for base and excess milk] shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk, in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to §100X. 51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.</p>	<p><b>§100X.74 Butterfat differential.</b></p> <p>For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk, in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to §100X. 51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.</p>	Delete pending base/excess determination.
<p><b>§100X.75 Plant location adjustments for producers and on nonpool milk.</b></p> <p>(a) The uniform price [and the uniform price for base milk] shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in §100X.52(a), <u>except that the adjusted uniform price shall not be less than the Class III price; and</u></p>	<p><b>§100X.75 Plant location adjustments for producers and on nonpool milk.</b></p> <p>(a) The uniform price shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in §100X.52(a), except that the adjusted uniform price shall not be less than the Class III price; and</p>	<p>Delete pending base/excess determination.</p> <p>To ensure that producers in all markets receive at least the Class III price.</p>

(b) The [weighted average] <u>uniform</u> price applicable to other source milk shall be adjusted at the rates set forth in section §100X.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted [weighted average] <u>uniform</u> price shall not be less than the Class III price.	(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in section §100X.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.	
<p><b>§100X.76 Payments by a handler operating a partially regulated distributing plant.</b></p> <p>Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§100X.30(b) and 100X.31(b) the information necessary for making the computations, [such] the handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:</p>	<p><b>§100X.76 Payments by a handler operating a partially regulated distributing plant.</b></p> <p>Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§100X.30(b) and 100X.31(b) the information necessary for making the computations, the handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:</p>	
(a) The payment under this paragraph shall be an amount resulting from the following computations:	(a) The payment under this paragraph shall be an amount resulting from the following computations:	
(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;	(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;	
(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:	(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:	
(i) As Class I milk from pool plants and other <u>Federal</u> order plants, except that subtracted under a similar provision of another Federal milk order; and	(i) As Class I milk from pool plants and other Federal order plants, except that subtracted under a similar provision of another Federal milk order; and	
(ii) From another nonpool plant that is not an other <u>Federal</u> order plant to the extent that an equivalent amount of fluid milk products disposed of to [such] <u>the</u> nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;	(ii) From another nonpool plant that is not an other Federal order plant to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;	
(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;	(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;	

<p>(4) Multiply the remaining pounds by the difference between the Class I price and the [weighted average] <u>uniform</u> price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and [weighted average] <u>uniform</u> price shall not be less than the Class III price); and</p>	<p>(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and uniform price shall not be less than the Class III price); and</p>	
<p>(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less \$1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by \$1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other <u>Federal</u> order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.</p>	<p>(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less \$1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by \$1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other Federal order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.</p>	
<p>(b) The payment under this paragraph shall be the amount resulting from the following computations:</p>	<p>(b) The payment under this paragraph shall be the amount resulting from the following computations:</p>	
<p>(1) Determine the value that would have been computed pursuant to §100X.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:</p>	<p>(1) Determine the value that would have been computed pursuant to §100X.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:</p>	
<p>(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other <u>Federal</u> order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;</p>	<p>(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other Federal order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;</p>	

<p>ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other <u>Federal</u> order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and other <u>Federal</u> order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to §100X.60 shall be priced at the uniform price [(or at the weighted average price if such is provided)] of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the [lowest class] <u>Class III</u> price of the respective order), [except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest price class of the respective order]; and</p>	<p>ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other Federal order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and other Federal order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to §100X.60 shall be priced at the uniform price of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the Class III price of the respective order); and</p>	
<p>(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §100X.60 for [such] <u>the</u> handler shall include, in lieu of the value of other source milk specified in §100X.60(f) less the value of [such] <u>the</u> other source milk specified in §100X.71(a)(2)(ii), a value of milk determined pursuant to §100X.60 for each nonpool plant that is not an other <u>Federal</u> order plant which serves as a supply plant for [such] <u>the</u> partially regulated distributing plant by making shipments to the partially regulated distributed plant during the month equivalent to the requirements of §100X.7(b), subject to the following conditions:</p>	<p>(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to §100X.60 for the handler shall include, in lieu of the value of other source milk specified in §100X.60(f) less the value of the other source milk specified in §100X.71(a)(2)(ii), a value of milk determined pursuant to §100X.60 for each nonpool plant that is not an other Federal order plant which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributed plant during the month equivalent to the requirements of §100X.7(b), subject to the following conditions:</p>	
<p>(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§100X.30(b) and 100X.31(b) similar reports for each such nonpool supply plant;</p>	<p>(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§100X.30(b) and 100X.31(b) similar reports for each such nonpool supply plant;</p>	
<p>(B) The operator of [such] <u>the</u> nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at [such] <u>the</u> plant which are made available if requested by the market administrator for verification purposes; and</p>	<p>(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and</p>	

(C) The value of milk determined pursuant to §100X.60 for [such] <u>the</u> [nonpool] <u>unregulated</u> supply plant shall be determined in the same manner prescribed for computing the obligation of [such] <u>the</u> partially regulated distributing plant; and	(C) The value of milk determined pursuant to §100X.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and	
(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:	(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:	
(i) The gross payments by the operator of the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §100X.74, for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;	(i) The gross payments by the operator of the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §100X.74, for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;	
(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §100X.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and	(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in §100X.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and	
(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another <u>Federal</u> order under which [such] <u>the</u> plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.	(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order under which the plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies	

<p>(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under §100X.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.</p>	<p>(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under §100X.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.</p>	
<p><b>§100X.77 Adjustment of accounts.</b></p> <p>Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.</p>	<p><b>§100X.77 Adjustment of accounts.</b></p> <p>Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.</p>	

<p><b>§100X.78 Charges on overdue accounts.</b></p> <p>Any unpaid obligation due the market administrator from a handler pursuant to §§100X.71, <u>100X.73</u>, 100X.76, 100X.78, 100X.85, and 100X.86 shall be increased [1.5] <u>1.0</u> percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. The late charges shall [be added to the respective accounts to which due] <u>accrue to the administrative assessment fund</u>. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.</p>	<p><b>§100X.78 Charges on overdue accounts.</b></p> <p>Any unpaid obligation due the market administrator from a handler pursuant to §§100X.71, 100X.73, 100X.76, 100X.78, 100X.85, and 100X.86 shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.</p>	<p>The charge and overdue accounts was extended to include unpaid obligations to producers and cooperative associations as is currently provided in Orders Nos. 4, 5, 64, and others.</p> <p>All overdue charges will accrue to the administrative assessment fund as is currently provided in Order No. 4.</p>
<p><b>ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION</b></p> <p><b>§100X.85 Assessment for order administration.</b></p> <p><u>On or before the payment receipt date specified under Section 100X.71</u>, [As] each handler's pro rata share of the expense of administration of the order, each handler shall pay to the market administrator [on or before the 15th day after the end of the month] <u>its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than [up to] 5</u> cents per hundredweight [or such lesser amount as the Secretary may prescribe] with respect to:</p>	<p><b>ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION</b></p> <p><b>§100X.85 Assessment for order administration.</b></p> <p>On or before the payment receipt date specified under Section 100X.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:</p>	<p>Sentence structure of this paragraph was reordered for clarification.</p>
<p>(a) Receipts of producer milk (including [such] <u>the</u> handler's own production) other than such receipts by a handler described in §100X.9(c) that were delivered to pool plants of other handlers;</p>	<p>(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in §100X.9(c) that were delivered to pool plants of other handlers;</p>	
<p>(b) Receipts from a handler described in §100X.9(c);</p>	<p>(b) Receipts from a handler described in §100X.9(c);</p>	

<p>(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §100X.43(d) and other source milk allocated to Class I pursuant to §100X.44(a)(7) and (11) and the corresponding steps of §100X.44(b), except [such] other source milk that is excluded from the computations pursuant to §100X.60(d) and (f); and</p>	<p>(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to §100X.43(d) and other source milk allocated to Class I pursuant to §100X.44(a)(7) and (11) and the corresponding steps of §100X.44(b), except other source milk that is excluded from the computations pursuant to §100X.60(d) and (f); and</p>	
<p>(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §100X.76(a)(2).</p>	<p>(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to §100X.76(a)(2).</p>	
<p><b>§100X.86 Deduction for marketing services.</b></p> <p>(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to §100X.73, shall deduct <u>an amount specified by the market administrator that is no more than [up to] 7 cents per hundredweight</u> [or such lesser amount as the Secretary may prescribe] and shall pay [such deductions] <u>the amount deducted</u> to the market administrator not later than the [15th day after the month] <u>payment receipt date specified under §100X.71</u>. [Such] <u>The</u> money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. [Such] <u>The</u> services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;</p>	<p><b>§100X.86 Deduction for marketing services.</b></p> <p>(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to §100X.73, shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under §100X.71. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;</p>	<p>Minor changes in wording were made for clarification.</p>

<p>(b) In the case of producers for whom <u>the market administrator has determined that</u> a cooperative association [that the Secretary has determined] is actually performing the services set forth in paragraph (a) of this section, each handler shall make[, in lieu of the deduction specified in paragraph (a) of this section, such] deductions from the payments to be made to [such] producers as may be authorized by the membership agreement or marketing contract between [such] <u>the</u> cooperative association and [such] <u>the</u> producers. [and] On or before the 15th day after the end of the month, [pay] such deductions <u>shall be paid</u> to the cooperative association rendering [such] <u>the</u> services accompanied by a statement showing the amount of any [such] deductions and the amount of milk for which [such] <u>the</u> deduction was computed for each producer. <u>These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.</u></p>	<p>(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month, such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.</p>	<p>Sentence structure of this paragraph was reordered for clarification.</p>
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## **SECTION 2 - EXPLANATIONS FOR RECOMMENDED PROVISIONS**

### **100X.1 General Provisions**

All the milk marketing orders contain a section that incorporates 7 CFR Part 1000, General Provisions of Federal Milk Marketing Orders. The General Provisions provide definitions of key terms used in all orders, including reference to the enabling legislation, and establish the following common to all orders: the designation, power and duties of the market administrator; the terms of continuity, liquidation, and separability of the provisions; the handlers' responsibilities for maintaining records; and the termination of obligations.

No comments recommending changes to this section were received, so this section remains unchanged and identical in all orders.

### **100X.2 Marketing Area**

Dairy processors and manufacturers handling milk within a defined geographic area, the marketing area, are subject to regulation by the Federal milk marketing orders. The marketing area is the source of demand for fluid milk. Under the orders, handlers' performance is measured with respect to their ability to service this market. A marketing area definition is necessary to specify the geographic area and boundaries that constitute the market. Standard introductory language is recommended for all orders for purposes of simplification.

### **100X. 3 Route Disposition**

Route disposition is a key term in determining whether a distributing plant qualifies for pooling under a specific Federal order. It identifies a type of delivery associated with satisfying demand for fluid milk in the marketing area. As recommended, route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine), of a fluid milk product in consumer-type packages or dispenser units that is classified as Class I milk.

Reference to packaged products has been made in some orders - Orders 1, 7, 30 - but with respect to the plant identification of route disposition in the event of a transfer, not with respect to the type of delivery to limit the definition of route disposition. By including in this section the reference to products in consumer-type packages and dispenser units that are classified as Class I milk, it removes from consideration as route disposition any bulk fluid milk product deliveries. This serves to clarify the definition of route disposition. The issue of plant identification in the event of a transfer is a pooling issue not germane to the definition of route disposition per se. In order to

simplify this definition, the Committee recommends that the recommended treatment of transferred products be included under 100X.7(a)(3) in the pool plant definitions.

#### **100X.4 Plant**

A plant definition is included in the order to remove uncertainty with respect to what constitutes an operating entity for pricing and regulatory purposes. The definition addresses the breadth of the application of the term. Only in specified cases, separate buildings and separate facilities may not be considered to be part of the plant.

As recommended, a plant is defined as the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. This is meant to encompass all departments, including those where product is stored such as a cooler. The plant definition specifically does not include either of the following: a physically separate facility without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank to another, or a physically separate facility that is used only as a distribution point for storing packaged fluid milk products in transit for route disposition.

To account for regional differences in transporting milk, reload points for transporting bulk milk that do have stationary storage tanks may also be excluded from the plant definition. In the New England milkshed, there is a reload station with stationary storage tanks operated by a pool handler in order to facilitate the transport of milk from diverse and remote areas in Maine to the processing plant which is located in the marketing area. In this type of situation, the distant facility should be considered a reload facility at the request of the handler. This particular exception is referred to the Regional Committees, who have a more knowledgeable perspective of unique requirements in their area.

#### **100X.5 Distributing Plant**

A distributing plant definition is provided to distinguish a plant's particular function in the processing and distribution of milk from plants that perform other functions. The Federal order program regulates only those handlers that service the fluid market. A distributing plant is defined as a plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition. The time and location of the route disposition are included in the distributing plant definition in some orders. However, whether the route disposition occurred during the month or within the marketing area are pooling issues and should be included in 100X.7(a)

#### **100X.6 Supply Plant**

A supply plant definition is provided to distinguish its function in the processing and distribution of milk from

plants that perform other functions such as distributing plants. A supply plant is a potential or reserve supplier of milk for the fluid market. As such, seasonally it may contribute to coordinating the supply of milk with the demand for milk. A supply plant is a plant other than a distributing plant that is approved by a duly constituted regulatory agency to handle Grade A milk and at which fluid milk products are received or from which fluid milk products are transferred or diverted. The timing of its shipments and the destination of the milk are pooling issues and are included in 100X.7(c), pool reserve supply plant, and should be included in 100X.7(b), pool supply plant.

### **100X.7 Pool Plant**

The pool plant definition provides standards to distinguish between those plants engaged in serving the fluid needs of the marketing area and those plants that do not serve the market to a degree that warrants their producers sharing in the added value associated with the Class I utilization of the market. A pool distributing plant must meet two performance requirements structured as follows: 1) the proportion of its route disposition to bulk receipts and 2) the proportion of route disposition in the marketing area. Performance standards for supply plants to varying extent demonstrate an ability to contribute to supplying the demands for fluid milk in the market and to varying extent demonstrate an association with the marketing area. If a plant operates in more than one market, the plant's primary association with a marketing area is gauged by fluid sales and that determines the marketing area in which the plant is regulated. In the event that a plant is not primarily associated with any marketing area, it will be regulated in the marketing area in which it is located. A pool plant shall not include any portion of a plant that is not approved for handling Grade A milk and that is physically separated from a portion of the plant that has approval.

### **Pool Distributing Plant**

The Committee has made a number of recommendations to clearly define the performance requirements for a pool distributing plant. Many orders refer to Grade A milk in defining a pool distributing plant. However, a distributing plant by definition can only handle Grade A milk, so this qualification is redundant and has been removed from the pool plant section. The proportion of route disposition to receipts is derived from a divisor of receipts of bulk fluid milk products as opposed to receipts of total fluid milk products, and this is clarified and simplified. For this standard, receipts of bulk fluid milk products include milk diverted by the plant operator

The recommended uniform ratio of route disposition to total receipts of bulk fluid milk products is 25 percent. This is the lowest currently used among all orders and under uniform provisions prevents precluding from pool status any plants that are currently pool distributing plants. If this percentage is too low for milk deficit regions, the

Regional Committees may want to increase it for specific orders.

Performance requirements should also establish a minimum threshold of market participation, as measured by route dispositions in a marketing area, which when surpassed would cause a distributing plant to be fully regulated in that market. Currently, the proportion of route disposition in the marketing area is derived in some orders from a divisor of total route disposition and in other orders from a divisor of total receipts of fluid milk products. The Committee recommends the use of total route disposition as a divisor, because it can not be manipulated to avoid pool status as easily as total receipts. Some orders require a daily average minimum of route disposition in the marketing area. This was removed, because it is sufficiently covered under the exempt distributing plant definition in Sec. 100X.8(e). The uniform recommended ratio of 15 percent route disposition in the marketing area prevents forcing a change in status upon plants that are currently partially regulated. To facilitate proper accounting, all orders currently provide that packaged fluid milk products that are transferred from one handler to another are treated as interhandler transfers, with each transaction properly identified and specifically reported to the market administrator. This should continue under the uniform provisions. However, for the single purpose of qualifying a plant as a pool distributing plant, subsection 100X.7(a)(3) was included to address the transfer of packaged fluid milk products to a distributing plant. Packaged fluid milk products that are transferred to a distributing plant and which are classified as Class I sales shall be considered as route disposition from the transferring plant rather than the receiving plant. In addition to transfers that occur for sales in the marketing area, this subsection is meant to address the concern of properly pooling a plant with sales outside of the marketing area that are made through another plant. The language is necessary to preclude a plant from becoming partially regulated because it ships significant quantities of packaged fluid milk products to another distributing plant.

#### Pool Supply Plant

Pool supply plants are generally defined by their association with a marketing area and their ability to move milk to pool distributing plants that service the marketing area. The pool status is recognition of the plant's participation in the fluid market and allows the producers supplying the plant to share in the added value associated with the fluid market.

Performance standards for pool supply plants are generally structured to require that specified percentages of total milk receipts, including diversions, be transferred to pool distributing plants at specified times of the year. While strong requirements have been adhered to in milk deficit areas, the USDA in recent years has responded to industry requests to adjust or suspend shipping requirements in other areas due to changes in supply/demand relationships. When the shipping requirements are too restrictive, handlers are forced to move milk inefficiently, uneconomically, and unnecessarily.

The Committee has concluded that the supply plant performance standards are especially regional in nature and recommends that the Regional Committees respond to the local market structure. The committee has made

provisions for two types of supply plants, a “pool reserve supply plant” and a “pool supply plant”. The pool reserve supply plant is a plant located within the marketing area that is involved predominately in manufacturing nonfluid milk products but also serves to balance the market by providing a ready supply of milk when the market is short and a manufacturing outlet when milk is in surplus. Pool supply plants are plants involved predominately in the assembly of raw milk supplies at the farm and distribution of these supplies to plants. There may be areas where just a pool supply plant provision would be adequate, without the distinction of a pool reserve supply plant. In those cases the pool reserve supply plant definition recommended below could be adapted to include plants outside of the marketing area. For areas where it is preferable to distinguish between plants located in and out of the marketing area with different performance requirements - dates and percentages - for each, the pool reserve supply plant definition could be used as a guide in constructing the uniform language for the pool supply plant definition.

### Pool Reserve Supply Plant

A pool reserve supply plant is a plant capable of handling the reserve milk required for the marketing area. Its capability is demonstrated by: Grade A approval, location in the marketing area, seasonally defined deliveries under the plant operator's control to pool distributing plants, and formal request for pool status.

To qualify a supply plant, several orders allow direct shipment from farms to distributing plants, while others require at least some transfer through the plant. Transferring deliveries through a plant is often uneconomical and inefficient compared to direct delivery. Reserve supply plants should be allowed the flexibility to fully qualify by delivery from farm to distributing plant if the handler deems that to be the most efficient means of moving milk. Since seasonality of milk supply and demand varies by region, the Committee recommends that the Regional Committees determine the percentage and month details of the performance standard.

A number of orders currently provide for special pool status for supply plants located in the marketing area but generally only for cooperatives. The reserve supply plant status should be available for both plants operated by a cooperative association and proprietary handlers. A primary objective of pooling provisions is to provide the incentive to supply the fluid milk needs of the market. If a plant demonstrates the ability to accomplish this, its structure and ownership are irrelevant. The plant should be able to compete for milk supplies on equal footing, and its producers should share in the market utilization. In addition, there are manufacturing plants located in some marketing areas that are currently designated pool plants. This provision will prevent suddenly putting them into a disadvantageous position in procuring a milk supply.

The Committee recommends that location in the marketing area be a requirement for pool reserve supply plant status. The fundamental objective of the pooling provisions is to provide the incentive to supply the fluid milk needs of the market and to accommodate the pooling of the reserve supplies of milk that are available and necessary to serve

or balance the fluid needs. The fluid market is the primary market, and the necessary reserve milk is utilized by the manufacturing sector. The supplies for both the primary and secondary fluid markets and the manufacturing sector are necessarily commingled. Once the needs of the fluid market at any one time have been satisfied, the reserve supply will be most economically shipped to a close rather than distant plant. Likewise, when a fluid processor needs more milk a supply plant located in the marketing area can most economically and expediently route milk directly to the processing plant. It is anticipated that the required deliveries by pool reserve supply plants to pool distributing plants may be minimal. Their operations within the marketing area attest to their affiliation with the market and their ability to respond to its demands.

A plant shall not qualify for pool reserve supply plant status if it qualifies as a pool distributing plant under any Federal order or if it qualifies as an other Federal order supply plant. It is possible for a plant to qualify both as a pool supply plant and a pool reserve supply plant under a specific order. Such a situation could conceivably occur if a plant were part of a system of reserve supply plants (100X.7(d)). The plant could exceed the reserve supply plant standards in order to qualify the other plants in the system. Such a plant, however, would hold pool reserve supply plant status rather than pool supply plant status as part of a reserve supply plant system.

For eligible plants, the Committee recommends that pool reserve supply plant status be conveyed by the market administrator subsequent to a request for such status filed by the plant operator. The request should be filed no later than June 15 of each year. The status would be effective the following July for a year unless the plant operator properly requests nonpool plant status, the plant subsequently fails to meet the performance standards, or the plant qualifies as an other Federal order pool plant. If the plant requests and receives nonpool status for any month, the nonpool status shall remain in effect through the following June (100X.7(i)(5)). These filing requirements demonstrate a commitment to the market and deter temporary depooling that might otherwise result from variations in the relationship between class and uniform prices and variations between interorder prices.

### System Pooling

Supply plants and reserve supply plants benefit the market because they are able to balance milk supplies required by the fluid market. Handlers sometimes operate more than one plant to most efficiently meet the varying demands. System pooling recognizes business decisions -technological specialization, plant scale, and location economics - of milk handlers.

By meeting the applicable percentage requirements in the same manner as a single plant, two or more supply plants or two or more reserve supply plants which are operated by the same handler or by one or more cooperative associations may qualify for pooling as a system. In order to promote market stability over time in the pool, the status is intended to be annual. If a handler causes one of the plants to become ineligible for system pooling, that plant shall be out of the system for the duration of the applicable year. Likewise, plants can not be added to the

system after the annual plant list is submitted to the market administrator with the written request for system pooling.

### Unit Pooling

The Committee recommends that all orders recognize unit pooling. Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant. At least one of the plants in the unit must qualify as a pool distributing plant on its own standing. The other plants in the unit must process Class I or Class II products only. These other plants must be located in an equivalent or a lower price zone than the aforementioned primary pool distributing plant. For administrative purposes, the status must be requested of the market administrator in writing. Unit pooling accommodates the economic specialization of plant operations without imposing uneconomically, inefficient milk movements upon plant operators in order to compete for milk supplies.

The zone restrictions prevent the formation of units for the purpose of subsidizing through the pool the transportation of milk to Class II plants. The restrictions also serve to minimize subsidizing the transportation of milk for lower valued products by promoting the location of such plants to lower price zones. This arrangement ensures a degree of fairness to all handlers in processing Class II products and to all producers in the distribution of pool funds.

### Adjustment of Shipping Percentages

The Committee has included Section 100X.7(h) in lieu of a call provision. This subsection allows the market administrator to adjust the shipping requirements for pool supply and pool reserve supply plants if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. The finding would follow an investigation conducted on the market administrator's own initiative or at the request of interested parties. This provision allows the market administrator to respond promptly to temporary or changing local conditions in the market.

### **100X.8 Nonpool Plant.**

A definition should be provided to describe a plant which receives, processes or packages milk but which does not satisfy the requirements of a pool plant. While it may appear redundant, all current Federal orders provide for such a description in order to more clearly define those plants which are fully regulated and the extent of regulation. Nonpool plants should include an other Federal order plant, a producer-handler plant, a partially regulated distributing plant, an unregulated supply plant and an exempt plant.

As recommended, an other Federal order plant is described as any plant at which all fluid milk products are subject to the classification and pricing provisions of another Federal order. A producer-handler plant is described as a plant operated by a producer-handler as defined in any Federal order. A partially regulated distributing plant is described as a nonpool plant from which there is route disposition in the marketing area during the month, but which is not an other Federal order plant, a producer handler plant, or an exempt distributing plant. An unregulated supply plant should be described as a nonpool supply plant that is not an other Federal order plant, a producer-handler plant, or an exempt distributing plant. These descriptions provide for the uniform application of terminology that is consistent with the current and anticipated future needs of all milk orders.

Many current Federal orders provide that any plant operated by a governmental agency shall be exempt from regulation. As recommended, such exemption would be continued under the consolidated orders. Many current Federal orders also exempt from regulation small distributing plants who because of their size do not significantly impact the competitive relationships in the market. The level of route disposition required before an exempt plant becomes regulated varies in the existing orders. As recommended, any plant with route disposition during the month of 150,000 pounds or less would be exempt. Such limit reflects the maximum amount of fluid milk products allowed by an exempt plant in any current Federal order so the recommended language will not impose a pool obligation upon plants that are currently exempt.

In order to determine and to verify the status of an “exempt” plant, the market administrator is provided with the authority to require from such entities any reports and information deemed appropriate. Such authority is currently provided and should continue.

### **100X.9 Handler.**

The impact of regulation under a Federal order is primarily on handlers. A handler definition is therefore necessary to identify those persons from whom the market administrator must receive reports, or who have a financial responsibility for payment for milk in accordance with its classified use value. This will assure that all information necessary to determine a person’s status under the order can be readily determined by the market administrator.

As recommended, the handler definition includes the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, a producer-handler, and any person who operates a partially regulated distributing plant, an other Federal order plant, an unregulated supply plant or an exempt plant. In addition, some orders currently include in the definition of handler any person who engages in the business of receiving milk from any plant for resale and distribution to wholesale and retail outlets. Brokers or others who negotiate the purchase or sale of fluid milk products or fluid cream products from or to any plant are also defined as handlers under some existing orders as are persons who by purchase or direction cause milk of

producers to be picked up at the farm and/or moved to a plant. As recommended, the term “handler” encompasses all of the entities described herein. Changes in technology have allowed raw milk procurement areas and packaged milk distribution areas to expand. This expanded marketing chain is often under the control of intermediaries such as brokers or wholesalers. It is increasingly difficult for the market administrator to track the movement of milk from farm to consumer without information obtainable only from these intermediaries. The recommended handler definition enables the administrator to more readily obtain such information as required.

#### **100X.10 Producer-Handler.**

All Federal orders currently provide for defining an entity which operates as both a producer and a handler. The orders set parameters within which such producer-handlers may produce, process, and distribute fluid milk products while remaining exempt from regulation. As proposed, the consolidated orders continue to exempt producer-handlers from regulation.

The Agricultural Marketing Agreement Act of 1937 explicitly prohibits the regulation of producers. A primary basis for exempting a producer-handler from the pricing and pooling provisions of a milk marketing order is that such an entity customarily has a relatively small operation and is operating in a self-sufficient manner. The milk that is processed, packaged and distributed by a producer-handler is obtained from the producer-handler’s own-farm production at the producer-handler’s own enterprise and risk. Any fluctuation in a producer-handler’s daily and seasonal milk needs is met through own-farm production, and excessive milk supplies are disposed of at the expense of the producer-handler. Under this arrangement, a producer-handler seldom is a major competitive factor in the market of regulated handlers and therefore should continue to be unregulated.

As proposed, any handler, including a producer-handler, is exempt from the pooling and pricing provisions during any month in which route disposition does not exceed 150,000 pounds.

Since producer-handlers are not subject to the same pricing and pooling provisions of an order as are handlers that are regulated by a marketing order, it is appropriate to require producer-handlers to rely primarily on their own-farm production to balance their fluid sales and to find outlets for their surplus production. However, a producer-handler should be allowed some margin on supplemental milk purchases. Relatively small supplemental purchases would not likely undermine the concept of producing, processing and distributing milk at a producer-handler’s own enterprise and risk. As proposed, those producer-handlers which have both own-farm production and route disposition in excess of 150,000 pounds are allowed to purchase no more than 150,000 pounds of supplemental fluid milk products each month from pool sources. As is currently the case, any supplemental requirements of fluid milk products by a producer-handler is limited to receipts from pool sources, thus insuring that producers associated with the pool gain the benefit of all Class I sales over and above the producer-handler’s own production.

There are a number of producer-handlers currently operating under existing Federal orders which have both route disposition and receipts from pool sources in excess of 150,000 pounds each month but whose monthly own-farm production is less than 150,000 pounds. Receipts from pool sources, regardless of the quantity so received, are priced as Class I milk to the pool handler supplying such product. With respect to those producer-handlers whose own farm production is less than 150,000 pounds during the month, regardless of the extent of the producer-handler's receipts from pool sources, any pricing advantage accruing to such producer-handler is limited to the extent of its limited own farm production. As proposed, therefore, such handlers would retain their status as producer-handlers under the consolidated orders.

As previously stated, it is appropriate to require producer-handlers to rely primarily on their own-farm production to balance their fluid sales and to find outlets for their surplus production. Any disposition of surplus production by a producer-handler to the plant of a fully regulated handler, whether in bulk or packaged form, is allocated at the pool plant to the lowest Class, thereby preserving the Class I share of the market for producers who are sharing the cost of carrying the markets surplus production. However, disposition of packaged product by a producer-handler to a distribution facility operated by a fully regulated handler, if permitted under the orders, would allow a producer-handler to dispose of its surplus production by capturing a greater share of the Class I market, while also allowing such fully regulated handler to purchase Class I milk at less than minimum order price, thereby undermining the integrity of the orders. Therefore, as proposed, a producer-handler is not allowed to dispose of fluid milk products using the distribution system of another handler except for direct deliveries to wholesale or retail outlets as route disposition or directly to the plant of a pool handler at which point such product would be allocated at the lowest class.

Notwithstanding the exemption of producer-handlers from regulation, there may be instances where it is to the advantage of the person who is both a producer and a handler to operate such businesses as two distinct entities. In these circumstances, the plant would be a fully regulated distributing plant and the farm operated as a producer. This would have no adverse effects on the market as a whole and would be allowed, upon request by the producer-handler, under this proposed definition.

Since producer-handlers are intended to be exempt from regulation, some means must be provided to determine and to verify such status. Accordingly, the market administrator is provided with the authority to require reports and other information deemed appropriate to determine that an entity which is engaged in the production, processing and distribution of fluid milk products is in fact operating as a producer-handler as defined in the order. Such authority is currently provided in the orders and should continue.

#### **100X12. Producer.**

All orders currently provide for describing dairy farmers that are relied upon as a regular source of milk for a

marketing area and should continue to do so. One of the functions of Federal orders is to ensure timely payments at minimum order prices to producers associated with the market. Producers for a particular order should continue to be described as dairy farmers who produce Grade A milk (as approved by a duly constituted regulatory agency) and whose milk is received at a pool plant directly from the farm or is picked up at the farm by a cooperative for delivery to a pool plant. The term producer should also include a dairy farmer whose milk is “diverted” by a pool plant operator to another pool plant or to a nonpool plant or by a cooperative association operating in its capacity as a .9(c) handler to a nonpool plant, provided that the farmer has first established an association with the Federal order in which the farmer is considered a producer. Requirements for such association are described in Section 100X.13.

A dairy farmer, however, should not be considered a producer under two Federal milk orders with respect to the same milk. The producer definition proposed, therefore, excludes a dairy farmer’s milk which is received by diversion at a pool plant in one Federal order from a pool handler (including a cooperative operating as a handler under Section .9(c)) regulated under another Federal order if the dairy farmer is a producer under the other Federal order.

Since producer-handlers and exempt plants are specifically exempt from Federal order pricing provisions, the term producer should not include a producer-handler as defined in any Federal order. Likewise, the term producer should not apply to any person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant in accordance with Section 100X.13.

It would be improper to accord producer status to dairy farmers whose milk is received at a pool plant only when a favorable federally unregulated market is not available. An unregulated or state regulated plant, for example, may attempt to move its surplus milk to a pool plant only on weekends in order to balance its supply. Additionally, an unregulated or state regulated plant operator may receive all of a dairy farmer’s milk at its plant during the short season and seek to dispose of such milk through pool plants during the flush production months when available outside markets are limited. The above circumstances would tend to place on the producers regularly associated with the pool the burden of carrying the surplus of unregulated fluid markets without the benefit of sharing in the fluid sales.

Other problems arise as a result of handlers depooling milk primarily to gain an advantage when manufacturing class prices are higher than the uniform price. Typically this type of depooling is beneficial neither to individual producers depooled nor to the remaining pool producers. It is disruptive to the marketwide pool and results in disorderly market conditions.

In these circumstances, it is the handler's decision in moving milk that impacts the producers and the pool. It is the handler's actions that determine producer status. The Committee recommends uniform provisions designed

to deter handlers from moving milk in a manner that is disadvantageous to both producers and the pool. Handlers who choose to regularly supply nonpool demands as their primary market and handlers who move milk in and out of the regulated market should not enjoy the benefits of equalization payments from the marketwide pool with respect to nonpool milk. The provisions would not apply in the event that a handler moves milk supplied by a producer under one Federal order to another Federal order.

The recommended language follows. The designation (2) is a placeholder to indicate the months of the "short" season, and the designation (1) is a placeholder to indicate the rest of the year.

(b) Producer shall not include:

...

(4) For any month of \_\_\_\_ (1) \_\_\_\_ through \_\_\_\_ (1) \_\_\_\_, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month or in either of the two preceding months. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order;

(5) For any month of \_\_\_\_ (2) \_\_\_\_ through \_\_\_\_ (2) \_\_\_\_, any dairy farmer whose milk is moved to a pool plant by a handler if the handler caused milk from the same farm to be moved as nonpool milk during the same month. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order;

(6) Any dairy farmer whose milk is received by a pool plant or a cooperative association under Section 100X.9(c) during any of the months of \_\_\_\_ (1) \_\_\_\_ through \_\_\_\_ (1) \_\_\_\_ if the handler caused milk from the same farm to be moved as nonpool milk during any of the preceding months of \_\_\_\_ (2) \_\_\_\_ through \_\_\_\_ (2) \_\_\_\_\_. This subsection shall not apply if all the milk so moved is considered producer milk under the provisions of another Federal order.

Generally, milk deliveries to nonpool plants that are not reported as diversions would result in loss of producer status for a fixed time period for the farmers' whose milk is so moved. The receipt or diversion by a pool handler of other milk from the same producer during that fixed time period

is not restricted; however, the payment for that milk would not be regulated under the Federal milk marketing orders. The milk would be treated as other source milk, and the dairy farmer would not be a pool producer.

The loss of producer status would remain in effect for the current month and for the following two months with an exception to accommodate the market demands for milk during the "short" season. If milk is depooled during the "short" season, the loss of producer status would remain in effect for the current month, and rather than discouraging the pooling of milk during the rest of the "short" season the loss of producer status would occur after the "short" season ends and remain in effect until the following "short" season begins. A stronger deterrent to depooling milk during the period of lower production and higher Class I demand is thereby set in place. The Committee has left the relevant time periods for the Regional Committees to determine.

Similar provisions relating to depooled milk have been operating in Federal Milk Marketing Order No. 1 under a section referred to as "dairy farmer for other markets." Included in the uniform provisions to indicate who is not a producer, the recommended provisions are in no way intended to overlap with the provisions for diversions. If a handler exceeds the diversion limitations as provided for in 100X.13, the respective milk only is removed from the pool and the producer would maintain producer status.

### **100X.13 Producer Milk.**

All orders currently provide for defining and identifying dairy farmers' milk which is associated with a particular market pool and should continue to do so.

The proposed definition of producer milk continues to include the milk of a producer which is received at a pool plant or which is received by a cooperative association in its capacity as a handler under Section .9(c). Most orders consider milk to be "received" when it is physically unloaded at the plant. This should continue to be the case. In order to ensure that the producer is paid most timely, milk picked up from the producer's farm but not received at a plant until the following month should be considered as having been received by the handler during the month in which it is picked up at the producer's farm but priced at the location of the plant where it is physically received in the following month.

The proposed definition also includes milk "diverted" by either the operator of a pool plant or by a cooperative association.

In order to promote the efficient movement of milk, all orders currently allow a handler to move producer milk, within certain specified limits, from a producer's farm to a plant other than the handler's own plant. As proposed, the definition of producer milk would allow unlimited diversions to other pool plants, providing maximum flexibility in efficiently supplying the fluid market. Under the proposed definition, once a dairy farmer has obtained producer status under an order and association with the marketing area by virtue of the fact that one day's production of such dairy farmer's milk was physically received as producer milk at a pool plant, unlimited diversions to nonpool plants would also be allowed. For pool distributing plants, the requirement in section 100X.7(a) that route disposition be equal to 25 percent of total receipts of bulk milk automatically limits diversions by those plants. With respect to pool supply plants and pool reserve supply plants, required shipping requirements will ensure that a sufficient quantity of milk is available for the fluid market since, even with unlimited diversions, the maximum quantity that a pool plant would be able to divert and still maintain its pool plant status in accordance with section 100X.7 would be the reciprocal of the pool plant shipping requirements for the month. Moreover, more stringent diversion limitations have been suspended in some orders to accommodate changing market conditions. Unlimited diversions would allow for maximum efficiency in balancing the market's milk supply. The market administrator's ability to adjust shipping percentages for pool supply plants and pool reserve supply plants as proposed in Section .7(h) will further ensure that an adequate supply of milk is available for the fluid market without imposing diversion limitations.

While it is expected that a one time producer touch base requirement and virtually unlimited diversions would be allowed in most of the consolidated Federal orders, it is recognized that in certain "deficit" markets, in order to ensure an adequate supply of fluid milk for that particular market, the producer association should be stronger and the diversion limitations tighter. Alternative language is provided for such markets. The alternate requirements for diversion privileges would specify the minimum number of days on which all milk of a producer must be physically received as producer milk at a pool plant and the percent of total producer receipts that could be diverted by the handler. The months during which such minimums must be met would be identified in both cases.

In order to provide flexibility, the proposed order language allows the market administrator to increase or decrease the delivery day requirements or the applicable percentages, subject to the conditions described in the proposed order language, if it is determined that such a revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. The granting of authority to make adjustments in this manner currently exists in some Federal orders and has proven to be responsive, efficient and effective and should be applied uniformly to all marketing

orders.

#### **100X.18 Cooperative Association.**

A cooperative association of producers is given unique standing under the Capper-Volstead Act. Dairy farmer cooperatives, moreover, are responsible for marketing the majority of the milk supplied to regulated handlers under the Federal order system. All current orders provide a definition for dairy farmer cooperative associations in recognition of the primary role of such entities in the industry. Defining such an organization of producers also facilitates the formulation of the various order provisions as they apply to such an organization of producers.

As provided herein, a cooperative association means any cooperative marketing association of producers which the Secretary determines, after application for such recognition by the cooperative, is qualified as such under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act". Additionally, most orders currently require that a cooperative association has full authority in the sale of the milk of its members and that it is engaged in making collective sales or marketings of milk or milk products for its members. This definition should be included in the uniform provisions.

Several current orders also provide a definition for a federation of two or more cooperative associations. As recommended herein, all orders would recognize a federation of cooperatives as a cooperative for purposes of payments and pooling, provided that each individual cooperative meets the criteria as set for individual cooperative associations and that the federation is incorporated under state law.

#### **§100X.30 Reports of Receipts and Utilization**

All current orders require handlers to submit monthly reports detailing the sources and uses of milk and milk products so that average use values, or blend prices, can be administered. The proposed language is similar to that contained in current orders. The language requires that the report be received by the market administrator on or before the 8th day after the end of the month. Receipt date is used to minimize delay in the announcement of the uniform prices. In the current orders the weighted average report date is the 8th day after the end of the month.

#### **§100X.31 Payroll Reports**

Reports detailing milk production by individual producers are needed to enforce minimum pricing. As proposed, this section is similar to those contained in current orders.

### **§100X.32 Other Reports**

This section requires handlers to report any additional information that the market administrator deems necessary to effectuate the terms of the order. As proposed, this section is similar to those contained in current orders.

### **Announcements by the Market Administrator** **100X.45, 100X.53, 100X.54 and 100X.62.**

Section 100X.45, Market administrator's reports and announcements concerning classification; section 100X.53, Announcement of class prices; section 100X.54, Equivalent price; and section 100X.62, Announcement of uniform price and butterfat differential, specify the reports and public announcements required of the market administrator in order to make available to the industry the various prices and classification percentages necessary for the operation of the Federal order pricing system. As proposed, these provisions are identical to current order provisions except for minor changes in the dates on which such announcements must be made.

### **Payments for Milk** **100X.70, 100X.71, and 100X.72**

Almost all of the current orders provide for marketwide pooling of milk. Marketwide pooling provides for equalization which enables all regulated handlers to pay a minimum uniform price to producers. The producer-settlement fund, established by the market administrator for each order, provides the means by which such equalization occurs. Payments into the producer-settlement fund are made each month by handlers whose total classified use-value of milk exceeds the value of such milk calculated at the uniform price. Similarly, payments out of the producer-settlement fund are made each month to any handler whose use-value is below the value of milk at the uniform price. This transfer of funds enables handlers with a use-value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average.

Section 100X.70, Producer-settlement fund, provides for the market administrator's

establishment of the producer-settlement fund. As proposed, this section is similar to those contained in current orders.

#### **§100X.71 Payments to the Producer Settlement Fund**

Payments to the producer-settlement fund, provides for payment by handlers into the fund. As proposed, this section is similar to those contained in current orders with several exceptions. It is expected that all federal orders after consolidation will incorporate marketwide pooling, therefore all references to individual-handler pooling are removed from the proposed language. The current orders vary with respect to payment dates, with a weighted average payment date of the 15th day after the end of the month. Under the proposed language, payment into the producer-settlement fund is due by the 15th day after the end of the month. Also, as proposed, payment would be considered made upon receipt by the market administrator. In view of the need to make timely payment to handlers from the producer settlement fund, it is essential that money due the fund be received by the due date. Additionally, payment cannot be received on a nonbusiness day, therefore if the 15th is a Saturday, Sunday, or national holiday, payment would not be due until the next business day. This is currently the case in several orders.

Section 100X.72, Payments from the producer-settlement fund, provides for payments from the fund to those handlers whose milk use-value is below the value of milk at the uniform price. As proposed, this section is similar to those contained in current orders. Payments from the producer-settlement fund would be required one day after the required date for payments into the fund. This is consistent with the average time lapse between payment into the producer-settlement fund and payments from the fund in existing orders. Also, as in the prior section, payments would be made on the next business day when the required payment date falls on a Saturday, Sunday, or national holiday.

#### **§100X.73 Payments to Producers and to Cooperative Associations**

The payment provisions to producers and cooperatives vary greatly among the current federal orders, particularly in regard to partial payment frequency, timing, and amount. The proposed provisions were designed to neither accelerate nor delay producer payments on average when compared to the current provisions. In some cases the partial payment has been accelerated but the level of minimum payment has been reduced. The intention of these proposed uniform provisions is to standardize payment terms system wide without altering the current financial exposure faced by

producers in total.

Each order currently requires handlers to make at least one partial payment to producers in advance of the announcement of the applicable uniform prices. The partial, or advanced, payment varies across orders by the required payment date, rate of payment, and volume of milk to be paid on. The proposed uniform provisions require that the partial payment be received by producers by the 26th of the month. This payment date is somewhat accelerated when compared to the current weighted average advanced payment date of the 29th in the current orders. It is the same date as currently used without difficulty in the southeast order. The advanced payment would be based on the each producer's production during the first 15 days of the month at a rate equal to the prior month's Class III price.

It is proposed that full payment be made so that it is received by producers no later than two days after the required pay-out date of monies from the producer settlement fund. This would result in a final payment receipt date of the 18th, barring weekend or holiday delay. The weighted average final payment date in the current orders is the 18th.

Cooperatives will be paid by handlers for bulk milk and skim milk on the terms described for individual producers except that required receipt of payment will be one day earlier. Providing for an earlier payment date for cooperative associations is warranted because it will permit the cooperative association the time needed to distribute payment to individual producer-members. The cooperative payment language has been expanded to include bulk milk and skim sold by cooperative pool plants as well as by cooperatives acting as a handler.

All of the above payment dates are receipt dates. Since payment cannot be received on a non-business day, payment dates that fall on a Saturday, Sunday, or national holiday will be delayed until the next business day. While this has the effect of delaying payment to cooperatives and producers, the delay is offset by the shift from "date of payment" to "date of payment receipt".

#### **100X.74 Butterfat differential.**

Each order currently provides for the computation and announcement of a butterfat differential and should continue to do so unless multiple component pricing is adopted for an order. It is a common feature of all orders, is uniform among the current orders, and is familiar to the industry.

The butterfat differential is used to adjust the uniform price for milk based on its butterfat content. This adjustment of the uniform price reflects the incremental value of milk containing more or less butterfat than the standard announced level. Uniform prices under the orders are announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat is worth

less than the announced price, while milk containing more than 3.5 percent butterfat is worth more than the announced price. This adjustment ensures equitable payments for milk that reflect the value of the butterfat contained therein.

**100X.76 Payments by a handler operating a partially regulated distributing plant.**

All current orders provide a method for pricing sales of milk in a marketing area by plants that are not fully regulated under any Federal order. An unregulated plant is not required to account for all of its dispositions at the established classified prices or to return the minimum uniform price to producers supplying the unregulated plant with milk. An absence of regulation with respect to such plants would provide the operator of an unregulated plant a competitive advantage over fully regulated handlers in disposing of higher valued Class I milk in the regulated marketing area. Unless some method is provided for removing this competitive advantage, inequities would exist among handlers in the sale of milk in regulated markets. These inequities would have a disruptive effect on orderly marketing and negate the intent of the Agricultural Marketing Agreement Act.

It is recognized under current orders that the purchase by a partially regulated plant of Class I milk priced under a Federal order in an amount equal to or in excess of quantities sold by such partially regulated plant in the marketing area ensures that with respect to such marketing area sales, pricing equality is maintained between the partially regulated plant and fully regulated plants. In these circumstances, no additional payments are required of the partially regulated plant.

Current orders also provide for those instances where a partially regulated plant purchases no milk from fully regulated handlers, or where such purchases are in an amount which is less than the quantity of route disposition in the marketing area by the partially regulated plant. In those instances, payment shall be made by the partially regulated plant into the producer-settlement fund of the regulated market at a rate equal to the difference between the Class I price and the uniform price of the regulated market. Such payment applies to the partially regulated plant's sales in the marketing area which are in excess of the quantity of Class I milk purchased from fully regulated handlers.

Many current orders also allow the operator of a partially regulated plant to demonstrate that payments for its total supply of milk received from dairy farmers was in an amount equal to the amount which the partially regulated plant would have been required to pay if the plant were fully regulated. This amount may be paid entirely to the plant's dairy farmers or in part to such dairy farmers with the balance paid into the producer-settlement fund of the regulated market. This option

is commonly known as the Wichita Option.

As proposed, all three of the above options are included in the uniform order provisions. All of the current orders also include in this provision the option for a handler, under certain circumstances specified in the order language, to make payment for any reconstituted milk disposition to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients. This option should be retained in the uniform order provisions.

#### **100X.77 Adjustment of accounts.**

All current orders provide for the market administrator to adjust, based on audit of a handler's reports, books, records, or accounts, or other verification, any amount due to or from the market administrator, or to a producer or a cooperative association. This provision should be included in the consolidated orders. The provision requires the market administrator to provide prompt notification to a handler of any amount so due and requires payment adjustment to be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

#### **100X.78 Charges on overdue accounts.**

All current orders provide for an additional charge to handlers who fail to make payment to the market administrator for the producer-settlement fund when due. Many orders also provide for an additional charge to handlers who fail to make payments to the administrative assessment and marketing services accounts. As proposed, the uniform provisions provide for an additional charge for late payments to any of the three funds. While the rate of such overdue charge varies among the current orders, it is proposed that a 1.0 percent charge per month be incorporated in the uniform order provisions.

Several current orders also provide similar overdue charges for late payments to producers and to cooperative associations. In order to discourage late payments by handlers to producers and cooperatives, the Committee recommends including these late charges in the uniform provisions.

All overdue charges shall begin the day following the date the obligation was due. Any remaining amount due will be increased at the rate of 1.0 percent on the corresponding day of each month until the obligation is paid in full.

As proposed, all overdue charges would accrue to the administrative assessment fund. The late payment charge is to be a penalty, in effect, that will induce compliance with the payment terms of

the order. As such, the charge should accrue to the source of funding for determining when there is an incidence of late payment, the amount of the late-payment charges, and collection of such payments or inducing noncompliant handlers to pay on time. If late-payment charges for monies due on producer milk were to accrue to the balance owed to either producers, cooperatives or producers/cooperatives via the producer settlement fund it could result in such producers and cooperatives being less concerned whether they are paid on time, thus being counterproductive to the purpose of late payment provisions. In this way cooperatives and producers would not be placed in a position where they would prefer to be paid several days late so that they would receive the late-payment charges or increase the level of producer prices due to late payment fee accrual to the producer settlement fund. This is of particular concern in markets with a single dominant cooperative. Additionally, by having late-payment fees accrue to the administrative fund, monies are made available to enforce late-payment provisions that would otherwise have to be generated through complying handlers' administrative assessments.

#### **100X.85 Assessment for order administration.**

The Act provides that the cost of order administration shall be financed by an assessment on handlers. All current orders provide for proportionate per hundredweight assessments of varying rates. As proposed, a maximum rate of 5 cents per hundredweight is provided. The assessment would apply to all of the handler's receipts pooled under the order.

#### **100X.86 Deduction for marketing services.**

As in most current orders, the new orders should provide for the furnishing of marketing services to producers for whom cooperative associations do not perform services. Such services should include providing market information and establishing or verifying weights, samples and tests of milk received from such producers. In accordance with the Act, a marketing services provision must benefit all nonmember producers under the order.

The market administrator may contract with a qualified agent including a cooperative association to provide such services. The cost of such services should be borne by the producers for whom the services are provided. Accordingly, it is proposed that each handler be required to deduct a maximum of 7 cents per hundredweight from amounts due each producer for whom a cooperative

association is not providing such services. All amounts deducted should be paid to the market administrator not later than the due date for payments to the producer settlement fund.

## **SECTION 3 - PUBLIC COMMENTS AND COMMITTEE DISPOSITION**

### **Handler Obligations**

Hunter Farms et al, FOR-3

Proposal: A handler (except a cooperative acting in its capacity as a handler) may not reduce its obligations hereunder to producers or cooperatives by permitting producers or cooperatives to provide without full compensation "services which are the responsibility of the handler," such as:

Preparation of producer payroll;

Conducting a screening test of tanker loads of milk required by a duly constituted regulatory authority before milk may be transferred or tested for quantity and quality;

Conducting services for processing or marketing raw milk or marketing packaged milk.

IPC Disposition: The Agricultural Marketing Agreement Act in Sec. 608(c)(5) provides that handlers must pay all producers and producer associations the uniform price subject only to adjustments specified therein for volume, market and production differentials; grade or quality; location of delivery; seasonal adjustments; and the marketing services fund and the research and promotion fund. The Committee found nothing in the enabling legislation to indicate that the orders could address allowing handlers to reduce their payment obligation by permitting producers or cooperatives to provide without compensation any services.

The responsibilities of the proprietary handler include everything but what is specifically allowed to be excepted. Pursuant to the Agricultural Marketing Agreement Act, the responsibilities of cooperatives to their producers are dealt with in the membership contract.

(7 USC Sec. 608(c)(5)(F). The Committee, therefore, sees no need to include the proposal in the recommended uniform language.

The recommended uniform language for 100X.73, Payments to producers and cooperative associations, specifies that each handler must pay each producer and cooperative association the uniform price. The uniform price can be reduced only by: partial payments already made, deductions for marketing services required by the order, adjustments for errors made in making previous payments, and proper deductions authorized by the producer. In addition to the cost of hauling, proper deductions authorized by the producer include assignments unrelated to the

transaction between the producer and the handler. These are deductions that are made to simplify the producer's post-payment recordkeeping such as monthly loan and insurance payments. The Committee welcomes further comments and suggestions related to specifically defining or limiting proper deductions.

### **Pooling and Classification, General**

American Farm Bureau, FOR-11

Proposal: There should be greater uniformity in pooling and classification provisions.

IPC Disposition: Uniform classification has been referred to the Classification Committee. The directive of the Identical Provisions Committee is to identify provisions that can be uniform for all orders and construct the appropriate language. With some exceptions referred to the Regional Committees for local circumstances and seasonalities, all the provisions recommended by this committee are intended to be uniform for all orders. Except where seasonality needs to be reflected with months and percentages, uniform pooling provisions include: the distributing plant definition, including the treatment of packaged fluid milk products that are transferred when determining plant qualification; the definition of reserve supply plants; provisions for systems and unit pooling; the plurality of sales as the primary determining factor in determining the regulating order with location being a secondary factor; and uniformity in the definition of producer and greater uniformity in the definition of producer milk.

### **Exempt Plant Definition**

Florida Dairy Farmers Association, FOR-13 and FOR-34

Proposal: Distributing plants with route disposition in the marketing area of less than a daily average of 1500 pounds should be exempt. Flexibility by the market administrator to require reports and conduct periodic audits of these plants should be maintained.

Daniel J. Fessenden, The Assembly, State of New York, FOR-125

Proposal: The volume for exempt status for producer/dealers who handle less than 100 quarts of milk per day should be increased, and a uniform standard should be adopted for all Federal orders.

IPC Disposition: The Committee recognizes that some operations are too small to have a

significant impact on the competitive relationship of fluid processors in the market. Under the recommended language for 100X.8, Nonpool plant, an exempt plant would include a plant with monthly route disposition, regardless of location of disposition, of 150,000 pounds or less during the month. There is no reference pertaining to daily average deliveries. The exempt plant would be defined as a handler and would be required to file reports as prescribed by the market administrator to enable determination of the exempt status.

### **Lock-in Provision**

Florida Dairy Farmers Association, FOR-13 and FOR-34; Milk Marketing Inc., Rodney Carlson, FOR-121

Proposal: A plant located in the marketing area that at least meets that marketing order pooling standard would be pooled in that order regardless of greater route disposition in another order. Also, Florida Dairy Farmers Association proposed that plants in the business of distributing extended shelf life dairy products on routes over a wide geographical area would be pooled in the marketing area in which the plant is located.

Disposition: The Committee recognizes the disruption that can result from a plant having to frequently switch pool status from one order to another due to its fluid sales in more than one marketing area. With expanded marketing areas, it is expected that this problem will diminish but not disappear. In addressing the problem, it is important to retain the objective of milk marketing orders: to provide an incentive to move milk to the fluid market and allow the producers to share in the Class I value. The Committee also recognizes the conflicts in language that currently exist between adjacent orders in some areas. Identical provisions for all orders will remedy this situation.

If a plant operates in more than one market, the plant's primary association with a marketing area is gauged by fluid sales and that should determine the marketing area in which the plant is regulated. In the event that a plant is not primarily associated with any one marketing area, it could be regulated in the marketing area in which it is located. If location is the primary determinant of where a plant is regulated, one difficulty that arises is the issue of what to do with a plant that is not located in a marketing area but has fluid sales in at least one marketing area, if not more.

The Committee suggests language to address the problems that have led to the recent lock-in provision and lock-in proposals. If the distributing plant (or unit) is located in the marketing area

and meets the requirements of more than one Federal order, it should be pooled in the order in which it has had more than 50 percent of its route disposition for three consecutive months. If it has not had more than 50 percent of its route disposition in any one marketing area for three consecutive months, it will be pooled in the marketing area where it is located. If the plant is not located in any marketing area, it would continue to be pooled under the order for which it has had a plurality of route disposition. If its plurality shifts to another marketing area, after three consecutive months its pool status will shift to the other marketing area. The same logic has been applied to supply plants in the recommended language. Supply plants should be regulated under the order in which the greater qualifying shipments have been made unless automatic pooling status was granted in a particular order. These provisions maintain the handlers' performance as a primary prerequisite for pooling while preventing disorderly shifting of order regulation.

The exception to these recommended provisions is the plant processing extended shelf life products, as the Florida Dairy Farmers Association proposes. The Committee recommends adopting language similar to that proposed by the Association with respect to transferred packaged products. However, to clarify further the regulating order for plants that process aseptically packaged products, the Committee suggests an additional subsection, 100X.7(a)(4), that clearly states such plant will be regulated based upon location in the marketing area. This exception was made for practical purposes. These plants have the ability to distribute packaged product nationally, often to dry storage warehouses which may also have national distribution, making it difficult to readily determine in which marketing area the route sale occurred. Additionally, the ability to inventory aseptically packaged products for extended periods of time creates difficulty in determining when the route sale occurred, and it can result in erratic delivery schedules for the product. Thus be nature of the product, no continuous association with any one marketing area may be discernable.

### **Producer "Lock-out"**

Florida Dairy Farmers Association, FOR-13 and FOR-34

Proposal: Allow a new dairy farmer to become associated with the marketing area only during the months when the milk is needed for the fluid market. This proposal is intended to prevent the introduction of unneeded outside supplies during the surplus season and prevent new operations from entering the market during a surplus situation. The concern is that supplies should not be attracted by high prices when the supplies are not needed.

IPC Disposition: While the Federal milk marketing orders are structured to provide incentives

to move milk to the fluid market, there are limits to their scope. They can not lock farmers out of the pool. They can not regulate producers subject to the Agricultural Agreement Act, 7 USC Sec. 608(c)(13)(B). Additionally, the orders should not be used to prevent shipping milk into the marketing area pursuant to Sec. 608(c)(5)(G) of the Agricultural Marketing Agreement Act.

The seasonalities of milk supply and demand often do not correspond. There does exist a financial incentive for nonpool handlers to receive dairy farmers' milk during the tighter production season and then dispose of surplus on the pool during the rest of the year. The Committee recommends under 100X.12, Producer, that dairy farmers who supply nonpool plants operating in this fashion should not enjoy producer status and the benefits of receiving payments regulated by the order for fixed periods of time. Likewise, the handler will not enjoy the benefits of equalized payments from the marketwide pool with respect to nonpool milk. The recommended language in 100X.12(b)(6) specifically addresses the concern of attracting milk during the "short" season. If a handler moves a farmer's milk as nonpool milk during the "short" season, the handler can not reassociate that farmer with the pool until the following short season begins.

Producers and handlers enjoy the benefits of the pool if the producer's milk has been properly associated with the market. The benefits include diversion privileges. In milk deficit regions, there is a greater need to attract milk during periods of high demand. For this reason, the Committee suggests alternative language in 100X.13, Producer milk, that requires strong producer association with a market and tighter diversion limitations during the "short" season. This is intended to operate as a deterrant to handlers' associating producer milk with a high price pool and then not servicing its demands when milk is tight.

### **Producer "Lock-in"**

Darigold, Doug Marshall, FOR-126

Proposal: Regular participants in the pool should be prevented from moving in and out of the pool by means of a "lock-in" provision. There should be reasonable minimum pooling requirements to avoid "pool riding." There should exist performance requirements to attach to a pool. Once qualified, a producer should be locked into that pool for a minimum of four month. Deliveries to pool plants in other markets should be handled through compensatory payments.

IPC Disposition: The Agricultural Agreement Act prohibits the regulation of producers under 7 USC 698(c)(13)(B). Producers can not be "locked in" to an order. Under the Federal milk

marketing orders, handlers' actions determine producer status and the qualification of milk as pool milk.

The Committee addressed the issue of "pool riding" and recommends language in 100X.12(b)(4), (5), and (6) to serve as a disincentive to such action. This language prevents granting producer status for fixed periods of time to farmers whose milk is moved by a handler as nonpool milk at various times. Further, if a farmer's milk is depooled during the short season, the handler can not reassociate that farmer with the pool until the following "short" season begins. While not locking the farmer or the milk in or out of the pool, the recommended provisions tie the benefits of the pool to performance for the pool.

### **Late Payment Charges**

Florida Dairy Farmers Association, FOR-13 and FOR-34

Proposal: Late payment charges on payments for producer milk should accrue to the producer settlement fund rather than the administrative assessment fund. Producers are being deprived of revenue due them, and handlers are being rewarded as a result of paying late charges into a fund that handlers are required to maintain.

IPC Disposition: The late payment charge is intended to be a penalty that will induce compliance with the payment terms of the order. Administratively, it could be suggested that a late payment charge accrue to the related source of funding. However, if the late payment charges for monies due on producer milk accrue to the producer settlement fund, it could result in individual producers or cooperative groups being less concerned with receiving payments on time. Further, they may prefer to be paid late in order to increase the amount in the producer settlement fund account, thereby potentially increasing the producer price. This is counterproductive to the intention of enforcing a late payment penalty charge.

Additionally, if late payment fees accrue to the administrative assessment fund, monies are made available to enforce late payment provisions that would otherwise have to be generated through the administrative assessments on complying handlers. The Committee recommends that the late payment charge accrue to the administrative assessment account.

### **Cooperative Communication Regarding Reblending and Block Voting**

Trade Association of Proprietary Plants, Robert J. Williams, FOR-64 and FOR-100

Proposal: Cooperatives should be required to itemize for their members the difference between

their pay price and the announced minimum federal order uniform price. Additionally, cooperatives should be required to inform members of proposals on which the cooperative intends to vote as representative for its members. Further, the cooperative should notify members of their privilege to vote individually.

Proprietary plants should be allowed to fulfill their uniform price obligation on a total rather than individual producer basis. The concerns are: 1) the cooperative has a competitive advantage because it can reblend and 2) the cost of compliance and administration of federal order requirements on an individual producer basis.

IPC Disposition: The communication of information between the cooperative Board of Directors and its members is an internal management issue that is beyond the scope and intent of the Federal milk marketing orders. The Federal orders can not restrict reblending or block voting by cooperatives. The enabling legislation for Federal orders, the Agricultural Marketing Agreement Act, does address the legal affirmation of reblending proceeds (7 USC Sec. 608(c)(5)(F)) and block voting ( 7 USC Sec. 608(c)(12)) by cooperatives. The operating principles of the individual cooperative governs the manner in which the cooperative communicates with its members on these issues.

Cooperatives of milk producers exist as an exception in the Agricultural Marketing Agreement Act because the legislation that affirms the right of producers to unite and market their milk cooperatively, the Capper Volstead Act of 1922, predates the Agricultural Marketing Agreement Act. The Agricultural Marketing Agreement Act provides for "the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered" (7 USC Sec. 608(c)(5)(B)(ii)).

The Identical Provisions Committee holds that it is prohibited from including the substance of the proposals in its recommended provisions. The communication requirements of a cooperative to its members is beyond the reach of Federal order regulation. The requirement that proprietary handlers pay each producer and association of producers the uniform price is clearly stated in legislation.

### **Pool Plants and Depooling**

Western United Dairymen, Jay Gould, FOR-84

Proposal: More plants should be pooled. Plants that depool should be required to remain

depooled for two years.

Western States Dairy Producers Trade Association, Ben Yale, FOR-105

Proposal: Milk should be more easily pooled but provisions should discourage opportunistic depooling and pooling of milk. Plants should not be allowed to get in and out of the pool on a month to month basis. They should be required to remain in the pool for a time period, six months to one year.

IPC Disposition: Eligibility to enjoy pool plant status is dependent upon the handler meeting performance standards. Rather than recommending one standard that reflects the highest or lowest performance requirements in any one marketing area, the Committee encourages the Regional Committees to address the needs in their area. The Committee does recommend that the Market Administrator have the responsibility to react to changing market conditions if the conclusions of an analysis suggest the need for a change.

The Committee has suggested nothing that would make it more difficult for handlers to become pool plants and expects that in many regions the performance requirements may be easier to achieve. However, the Committee agrees that handlers should be discouraged from moving milk in and out of the pool and has made some recommendations to remedy this problem.

One of the recommended requirements for pool reserve supply plant status is that the handler file a request with the market administrator no later than June 15 of each year. If the plant fails to meet requirements or requests nonpool status, its nonpool status would remain in effect for the rest of the year until the following July when it may again receive pool status after request. Filing a request demonstrates a commitment to the market, and the requirement deters from short-term depooling of milk.

Encouragements to handlers to keep producers in the pool are included under the recommended Producer definition in 100X.12. The Recommended provision does not accord producer status to producers if the handler has moved the dairy farmer's milk as nonpool milk during the month. The loss of producer status would remain in effect for the current month and for the following two months with an exception to accommodate the market demands for milk during the "short" season. If milk is depooled during the "short" season, the loss of producer status would remain in effect for the current month, and rather than discouraging the pooling of milk during the rest of the "short" season the loss of producer status would occur after the "short" season ends and remain in effect until the following "short" season begins. The loss of producer status for farmers shipping milk to

handlers results in the handler losing the benefits of the pool on that milk. The handler will be unable to participate in equalization payments from the marketwide pool with respect to nonpool milk.

### **Marketing Services**

Wisconsin Cheese Makers Association, FOR-54;

Proposal: Producers should be allowed to choose any FDA-certified milk testing laboratory to provide weighing, sampling, and testing information. This would allow competition to dictate the level of the marketing service deduction.

Trade Association of Proprietary Plants, Robert Williams, FOR-64 and FOR-100

Proposal: The requirement for marketing services should be eliminated or cooperatives should be allowed to reciprocally check weights and tests.

IPC Disposition: The Agricultural Marketing Agreement Act permits Federal orders to provide "for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers..." ( 7 USC Sec. 608(c)(5)(E)). The provision does not apply for members of cooperatives for whom services are rendered by a qualified cooperative. It seems unlikely that the Act envisioned the administrator of the order collecting from producers and then returning those deductions to producers so that they could provide the services themselves.

The Market Administrator's office may provide marketing services. The Market Administrator is not precluded from contracting out these services, and in a number of cases has done so. Nothing in the Act or the Federal orders prevents qualified cooperatives from conducting reciprocal testing.

The Marketing service provision has been similar in thirty-one of thirty two federal orders. The Committee recommends that the language be uniform and included in all Federal milk marketing orders.

### **Pooling Supply Plants**

Milk Marketing Inc., Rodney Carlson, FOR-121

Proposal: Producers and plants must demonstrate a willingness and ability to service the fluid market in order to share in the value of fluid milk. In some areas performance standards should be higher than they have been, and in other areas they should be relaxed. Markets in the southeastern part of the country would be well-served by provisions that would allow reserve supply plants located in the North and the West to participate in their higher uniform prices in exchange for greater assurance of a milk supply when local demand exceeds local supply.

IPC Disposition: The Committee recognizes that the provisions must be designed to encourage producers and handlers to service the fluid needs of the market. The Committee agrees that performance standards are a regional issue and has suggested that the Regional Committees address the specific percentages and seasonalities that need to be satisfied. Milk deficit areas such as the Southeast may want to include especially high performance standards.

The Committee realizes that such areas may want to reach beyond their milkshed boundaries for a milk supply. Although the Committee has recommended that a pool reserve supply plant be located in the marketing area, it has left open the standards for the pool supply plant definition. The Committee has also provided alternative language for diversion limitations to accommodate milk deficit regions. It is expected that if a plant primarily meets the needs of any particular marketing area it will enjoy pool status there and be subject to the diversion limitations imposed by that order.

### **Class I Pricing and Pooling**

Upper Midwest Dairy Coalition, et al., FOR-135, FOR-9, FOR-61, FOR-99

Proposal: The proposal includes extensive order revisions dealing with Class I pricing, transportation, and pooling. As submitted, the proposed revisions are "meant to be considered as a package and individual comments may not remain supportable if considered alone."

IPC Disposition: The Committee could only address the pooling issue. After discussion with

Coalition representatives, the Committee decided that the open (not based on performance) pooling suggested by the Coalition would probably not be viable without eliminating location adjustments.

The Committee has recommended the more traditional performance-based pooling which allows any producer or handler to become associated with any market by simply supplying the fluid needs of that market. A call provision in the form of allowing the market administrator to adjust the performance percentages was included.

If the Class I Pricing Committee recommends replacing the location adjustment with transportation credits, the Committee will reconsider the Coalition pooling proposal.

### **Producer-Handlers**

Associated Milk Producers, Inc. and United Dairymen of Arizona, Sydney Berde,  
FOR-118

Proposal: Eliminate the producer-handler exemption

IPC Disposition: In legislation that has amended the AMAA since 1965, it is specifically stated that: "The legal status of producer handlers of milk under the Agricultural Adjustment Act (7 USC 601 et. seq.), re-enacted with amendments by the Agricultural Marketing Agreement Act of 1937, shall be the same after the amendments made by this title take effect as it was before the effective date of such amendments."

The 1996 Farm Bill, unlike previous legislation, was silent on continuing to preserve the producer-handler's exemption from regulation. However, past history is replete with the specific intent of Congress to exempt producer-handlers from regulation. If it had been the intent of Congress to remove the exemption, Congress would likely have spoken directly to the issue rather than through omission of language that had, for over 30 years, specifically addressed the regulatory treatment of producer-handlers.

The Committee recommends producer-handler language in 100X.10 that will not change the regulatory status of producer-handlers.

### **Producer Eligibility**

Mayes Farms, FOR-56

Proposal: A producer's milk must be pooled on an order over 90% of the time during July - December to be eligible for any pooling on that order during January - June.

IPC Disposition: The Committee recognizes the disruption to a marketwide pool which results when a handler seeks to pool producers only when the market has surplus milk and a favorable federally unregulated market is not available. Similar disruption occurs as a result of handlers depooling milk while fluid demands are relatively high primarily to gain an advantage if manufacturing class prices are higher than the uniform price. Typically this type of depooling is beneficial neither to individual producers depooled nor to the remaining pool producers.

The Committee recommends addressing these concerns under Section 100X.12, Producer. The Committee recommends, for example, excluding a dairy farmer from producer status during January through June (months may vary in different orders) if the handler caused milk from the same farm to be moved as nonpool milk during any time during the months of July through December (months may vary in different orders). Also, during any month of January through June, a dairy farmer would not be accorded producer status if the handler caused milk from the same farm to be moved as nonpool milk during the month or in either of two preceding months.

### **Producer Payment**

Mayes Farm, FOR-56

Proposal: It should be required that all farmers / producers be paid no less than the Federal order uniform price whether an independent or member of a cooperative.

IPC Disposition: The Agricultural Marketing Agreement Act (AMAA) clearly requires that all handlers pay uniform minimum prices to "all producers and associations of producers"

(7 USC 608(c)(5)(B)(ii)). The AMAA also provides in Sec. 608(c)(5)(F) that a cooperative qualified under the Capper-Volstead Act may blend the net proceeds of all its sales in all markets in all use classification and make distribution thereof to its producers in accordance with the contract between the association and its producers.

## **SECTION 4 — IMPACT ON SMALL BUSINESS**

The maximum sales limit for an exempt plant varies greatly among the thirty two Federal orders. The Committee recommends a uniform limit of 150,000 pounds per month. This is the highest limit in any existing order. This will insure that no currently exempt plant will become regulated. Due to the higher limit there will be additional plants in some regions which will become exempt from regulation. At this time the number is not known.

Producer handlers are a separate regulated category that contains many small businesses. The increase in the sales limit for exempt plant status will allow over 50 percent of producer handlers nationally to be exempt from regulation. The Committee believes that its recommended producer handler definition will not cause any small business in that category to become fully regulated.

The largest category of small business in the industry are dairy farmers which are producers under the orders. The Committee believes that its recommended provisions do not regulate any producer in his capacity as a producer.